Upon this denial however, the FHWA emphasized the availability of a transcript detailing every word stated within the video and provided the plaintiff with those materials. Dexter Decl. Ex. D. Despite the offernace of the transcript, the named plaintiffs in the case proceeded to request video footage of the deceased as well as their intimate conversations with FHWA representatives.

III. ARGUMENT

A. Legal Standard for Summary Judgment

For summary judgment to be permissible, there must be "no genuine dispute as to any material fact" and the movant must be entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When there are no genuine issues of material fact, the Court's consideration of motions for summary judgment in light of Exemption 6 is appropriate. *New York Times Co. v. National Aeronautics & Space Admin*., 782 F. Supp. 628. Routinely, courts deny a plaintiff's summary judgment motion where Exemption 6 applies. *Id.* at 63

B. The requested information falls under Exemption 6 of the Freedom of Information Act and therefore is exempt from release.

Under the Freedom of Information Act (FOIA), an agency or governmental entity must disclose information requested by any person, unless the information falls under one of the many statutory Exemptions defined explicitly in the statute. *See*. 5 U.S.C. § 552(d); *See Nat'l Ass'n of Retired Fed. Emp. v. Horner*, 879 F.2d 873-874 (D.C. Cir. 1989). One of these outlined Exemptions, Exemption 6, broadly protects files, beyond just a single medium, from disclosure if disclosure would constitute a clear invasion of personal privacy. 5 U.S.C. § 552(b)(6).

Both Exemption 6 and Exemption 7(c) have been used in cases involving privacy interests. Cases from Exemption 7(c) will be instructive in regard to the privacy inquiry, despite this Exemption being much broader. *Jud. Watch, Inc. v. DOJ*, 365 F.3d 1108, 1125 (D.C Cir. 2004) at 1110. Exemption 7(c) essentially excuses from disclosure "records or information compiled for law enforcement purposes" if their production could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

Exemption 6 protects the release of information if it is determined that the files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Courts apply a four-part test to determine whether or not a governmental agency can protect information from disclosure. First, the court must determine if the information in question fits under the broad definition of personnel, medical or similar files. *Multi Ag Media LLC v. USDA,* 515 F.3d 1224 (D.C. Cir. 2008). Subsequently, courts determine if these files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). *Nat'l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, F.2d 319 (2004). Then courts must decide if the requester's high burden of evaluating whether there is a significant public interest is met. § 552(b)(7)(C). *Hertzberg v. Veneman*, 273 F. Supp. 2d 67 (D.D.C. 2003) at 70. And finally, the court must interpret that the public interest would outweigh the clear privacy interest that may be compromised by disclosure. *Nat'l Ass'n of Retired Fed. Emp. v. Horner*, 879 F.2d 873, 874 (D.C.Cir.1989).

The request by the WPP of the video footage, considering the video contains no content affiliated with the bridge collapse, falls under Exemption 6. This is due to the information's similarity to previously protected categories of information. Also, the video can be prohibited from disclosure due to the significant privacy interest implicated by the surviving family members. In addition, the low public interest in specifically the video disclosure after the release

of the transcript, allows FHWA to prohibit the video from disclosure. Finally in balancing that interest against the strong government interest in protecting survivors from extreme anguish, the FHWA shows that there is a stronger interest in prohibiting disclosure.

1. The video footage taken from the FHWA falls into the category of "similar files" and therefore satisfies the threshold test for the application of Exemption 6 of the FOIA.

Exemption 6 states that FOIA requests for disclosure do not apply for matters concerning personnel, medical, or similar files in which the disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6).

The information requested, rather than the nature of the files, is what courts have used to determine whether information falls under the "similar file" language. *New York Times Co. v. Nat'l Aeronautics & Space Admin* 920 F.2d 1002 (D.C. Cir. 1990.) In *New York Times Co. v. Nat'l Aeronautics & Space Admin* the court decided to look not to the nature of the files themselves, but rather to the nature of the information requested. *Id.* at 213. The court in its reasoning stated that information does not need to be intimate to satisfy the threshold requirement. Rather the threshold for application of Exemption 6 was crossed if the information merely applies to a particular individual. *Id.* at 213. In the NASA I case, the recorded tape of the Challenger astronauts in their final moments were considered to be similar files because the tape conveyed enough information to apply to particular individuals. *Id.* at 216.

As stated in the record, the video has a variety of points in which individuals can be identified. The video includes a brief conversation with several workers as well as the FHWA Deputy Administrator. Dexter Decl. ¶ 17. In addition, the record reflects that each of the four

deceased construction workers have surviving members of their family who would be able to identify their loved ones in the video. Dexter Decl. ¶ 22.

Given that the threshold of Exemption 6 only requires that information apply to a particular individual and the media in question includes four, the Exemption will apply.

2. The court should determine the video footage of the bridge collapse as implicating substantial privacy interests and choose not to disclose.

The court has defined a substantial privacy interest as one that includes "reasonable expectations of undisturbed enjoyment in the solitude and seclusion of [one's] own home" as well as info in which disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *NARFE*, 879 F.2d at 876; *see also* § 552(b)(6). Specifically, the court has stated that privacy protection extends to surviving family members and to overcome said privacy interests, the burden falls to the requestor. The requestor must produce evidence that would warrant belief by a reasonable person that government misconduct occurred. *Id.* at 167.

In *New York Times Co. v. Nat'l Aeronautics & Space Admin (NASA II*), the court established that substantial privacy interests include "reasonable expectations of undisturbed enjoyment in solitude and seclusion of one's own home." 782 F. Supp. 628 (D.D.C. 1991) at 631. In *NASA II*, the court stated that given the demonstrated public and press interest in the tragedy, families faced potential assault on their privacy. *Id.* at 633. In particular, the court reasoned that the surviving families of the astronauts would likely be solicited about intimate details in response to their loved one's deaths in a very public national tragedy. *See id.* Given the potential for an assault on personal privacy, the court reasoned that the NASA families had a substantial privacy interest.

In *Favish,* a case where a FOIA request was submitted for the death scene photographs of the president's deputy counsel, the court held that it was inconceivable that the government would intend a narrow definition of personal privacy. 541 U.S. 157 at 171. Specifically, the court reasoned information should not be obtained with no limitations at the expense of surviving members personal privacy. *See id.* The court emphasized that unlike previous cases, the right to personal privacy is not limited to just the decedent. Id. at165. This is in part due to the family's own desire to "secure their own refuge from a sensation seeking culture" for their own peace, rather than that of the deceased. *Id*. at 166.

The surviving family members of the FHWA construction workers' privacy interests are covered by the exemption due to the intimate details within the video. In *NASA II*, the families of the astronauts' privacy interests were at issue. *See Id.* Specifically their privacy interests in relation to the intimate details regarding the voices of the astronauts. *Id.* at 632. The video in this case was a component of the "FHWA Works" video series that was being developed to educate the public about the work of FHWA Dexter Decl. ¶ 12. However, in this mission, the FHWA captured a recording of the workers discussing intimate details of their life. Dexter Decl. Ex. E. The petitioners also emphasize that if the FHWA video is to be obtained the intimate details will be discussed. Martinez Decl. 13. The use of intimate details to "put a face" on the lives lost in construction accidents every day, violates the privacy interests of surviving family members. Martinez Decl. 13. In *NASA II,* the court reasons that Exemption 6 is primarily meant to guard against unnecessary files that contain highly intimate details of a highly personal nature. 782 F. Supp. 628 (D.D.C. 1991) at 631. As shown by the transcript in Ex. E, the workers mention not only their extensive connections to the area but also a great deal about their heritage, aspirations, lineage, and personal lives. These details are extremely intimate and given the petitioner's

intention to use these details to personify the accident with recordings of the workers, the FHWA families have a right to protect from the disclosure. *See id.* Also as discussed in *Favish*, the court has a demonstrated interest in protecting the rights of surviving members' privacy interests. 541 U.S. 157, 124 S. Ct. 1570, 158 L. Ed. 2d 319 (2004) at 171. The court reasoned that this fact applied even when the information conveyed is not images of the family themselves. *See id.* The FHWA public works video does not directly show the conduct immediately before the bridge collapse or contain recordings from the family members themselves. However, the fact that it elicits additional anguish for surviving family members is enough to place their privacy interests within the scope of the exception. *See id.*

Courts reason that potential assaults on surviving family members by the media regarding their intimate details implicate a privacy interest. Immediately after the bridge collapse there was widespread coverage of the tragedy via a series of prominent news sources as well as a request from a family to reduce media coverage of a funeral. Martinez Decl. ¶ 7. This speaks directly to the significant level of media attention that persisted after the incident and continues to remain around the developing updates. Because the tape would implicate more than a de minimus privacy issue, meaning that the release of the tape would subject private individuals to a disruptive assault on their privacy, the tape should not be disclosed. *NARFE*, 879 F.2d at 878. Given that in *NASA II*, the families potential to be subjected to a barrage of telephone calls, mailings etc. was sufficient enough for the courts to find the families privacy interest substantial, the court should do the same in this case. *See* 782 F. Supp. 628 (D.D.C. 1991) at 633.

Given both the predicted media attention as well as the exposing of intimate details of the families, the court should determine the video footage of the bridge collapse as implicating substantial privacy interests and prohibit disclosure.

3. The Workers Protection Project has not demonstrated a public interest in disclosure beyond the previously released transcript. Therefore, the video should be exempt from disclosure.

A relevant public interest in the FOIA balancing analysis is one in which the disclosure of the information sought would shed light on the statutory actions of an agency or give additional insight into the aforementioned agency's operation. *See. U.S. Dep't of Defense v. FLRA*, 510 U.S. 487, (1994). Therefore a strong public interest exists when the media file in question will serve as the basis for government regulations, the cost and size of the video's production warrant government oversight and where there are legitimate questions of the methodology discussed in the video. *Advocates for Highway & Auto Safety v. Fed. Highway Admin*. 818 F. Supp. 2d 122 (D.D.C. 2011) at 126.

In *Advocates for Highway & Auto Safety v. Federal Highway Administration* the court ruled that the FHWA's decision to withhold videotapes requested under the FOIA was not permitted under Exemption 6 and there was a possible public interest in disclosure. 818 F. Supp. 2d 122, (D.D.C. 2011). The tapes at issue were components of a detailed research study examining truck driver's drowsiness on the road via "driver face" information. Id. at 124. The question presented before the court was whether or not there was a significant public interest in tapes in which there was no identifying information, but the driver's faces. *Id.* at 127. The court decided in this case that a public interest can exist in the videotapes when three standards are met. *Id.* at 126. The first being that there is a desire to examine the information in which governmental rules are based. *Id.* at 126. Given that this study was used to inform a series of Department of Transportation policies on service hours of drivers, a public interest was demonstrated. *Id.* at 126. Also, because the tapes played a small role in assisting the FHWA

create their own rules, the public has an interest in the content. *Id.* at 127. The second standard utilized in the plaintiff's public interest analysis is if disclosure of the media demonstrates how and why public funds are spent. *Id*. at 126. Since the study spanned over seven years and accrued a cost of 4.5 million in taxpayer dollars, the public interest in disclosure is clear. *Id.* at 127. Finally, a public interest is demonstrated where there is motivation in examining the methods in which the government produces data. *Id.* at 129. In this case, the plaintiff alleged that the study's methodology was flawed due to miscalculations across reports, despite the use of the same data source. *Id.* at 128. Also, the plaintiff called into question the subjectivity throughout the study. *Id.* 128. Compiling these protests together, there was a public interest demonstrated given the questions surrounding the validity of the study. *Id*. at 128.

In *Hertzberg v. Veneman*, the court evaluated whether or not the disclosure of wildfire prevention data would contribute significantly to public understanding of the operations or activities of government and therefore qualify as a public interest. *273 F. Supp. 2d 67 (D.D.C. 2003)* at 85. In this case the Defendant utilized Exemption 6 to protect three categories of records. *Id.* at 85. The first being unredacted versions of witness statements of several citizens in which identifying details were redacted. *Id.* at 84. Second, the documents that utilized a "check mark" system to determine whether individuals had chosen to evacuate from the fires. *Id.* at 85. Then finally six videotapes taken by residents while in the process of evacuating. *Id.* at 85. In regard to the first medium of information, the court stated that the public interest to be considered was if the disclosure of this information advances the citizen's right to be informed about what their government is up to. *See*. *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. at 773. Since the substantive content of the witness statements had already been communicated in previously released information, there was no

additional public interest in further disclosure. *Hertzberg,* 273 F. Supp. 2d 67 (D.D.C. 2003) at 88. Similarly, to the witness statements, the court found no additional reasoning for how the second media source (evaluation forms) would shed more light on government operations. *Id.* at 89. Consequently, the court determined there was no public interest and therefore there was no reason for disclosure. *Id.* at 88. The final piece of information, six videos taken by those witnessing the fire in their homes, was not decisively determined to have a public interest. *Id.* at 90. Instead, this information, which was non lexical in nature, had to be reviewed by the court or rather examined *in camera*. *Id.* at 89. This is primarily because the information was provided willingly and taken together the videos provide additional insight into the general operations of the government. *Id.* at 89. Specifically, the tapes would allow viewers to evaluate for themselves on how the agency responded and whether it failed to perform its official functions. Id. at 89. Despite this, the court noted plaintiff's argument that disclosing identifying information of the homeowners would assist in his investigation and serve a public interest was weak. This is because the link between the FOIA request and the "potential illumination of agency action" was far too murky.

In *NASA II*, the court expands upon the concept of marginal benefit being added by disclosing non lexical information on top of already existing lexical information. See *NASA II,* 920 F.2d 1002 (D.C. Cir. 1990). Specifically, the court stated this type of disclosure served no public interest. See *Id.* In this case, the plaintiff asserted that the public had a strong interest in disclosure because the non-lexical information was the "best available record of governmental activity aboard the Challenger shuttle" *Id.* at 633. The court was unconvinced of this argument because the plaintiff only provided mere speculation of the additional benefit provided by the voice inflections observable in the tape. *Id.* at 635. In addition, the court reasoned that even if

this mere speculation were true, such information would not contribute any additional knowledge to the public's understanding of NASA's operations as a whole. *Id.* at 635. Since the non-lexical information provided no additional insight on government operations disclosure was prohibited. *See id.*

Courts traditionally look to the video's purpose to serve as the basis for government regulations, the cost of the project depicted, and whether there are legitimate questions of the methodology to determine if a public interest exists in disclosure. In the case at hand, WPP explicitly seeks to obtain the non-lexical FHWA video footage despite the already provided transcript to "put a face on the lives lost in construction accidents every day." Martinez Decl. ¶ 13. The public interest asserted by the moving party is essentially to bolster their advocacy efforts by utilizing the personal information of each individual construction worker killed in the tragedy. Unlike the interest of promoting safe road travel and peer reviewing impactful conclusions via scientific study in *Advocates for Highway & Auto Safety,* there exists no relevant public interest on these grounds. *See.* 818 F. Supp. 2d 122, 124 (D.D.C. 2011). The petitioners explicitly seek to contextualize the individuals involved in the accident, and also may contend that the public will learn more about the FHWA's stated purpose through the video. Dexter Decl. ¶ 10-14. Given that WPP has expressed interest in information similar to that which was prohibited from disclosure in *Advocates for Highway & Auto Safety v. FHA,* there will not be a demonstrated public interest here. *See.* 818 F. Supp. 2d 122. In addition, though courts have ruled that there is a public interest in videos of projects with a significant amount of taxpayer expenditure, the video in contention today does not show details illuminating those fund allocations. *See. id.* The FHWA video only loosely depicts workers in the background and primarily focuses on the workers own personal perceptions of the project. Ex.E. Finally, the

methodology of the FHWA extensive infrastructure design is detailed heavily in materials already released to the public but is not illuminated by the video. *See.* Ex.E. That standard touched upon in *Advocates,* does not apply in this case. There is no allegations of clear scientific misconduct or suspect data, and therefore there is no demonstrated public interest. *See.* 818 F. Supp. 2d 122.

Similar to the facts presented in *NASA II,* even if the information that WPP is requesting does have an observable public interest, it would have to have not been met by the existing information already available to the public. 920 F.2d 1002 (D.C. Cir. 1990) at 1006. Ex. F and Ex. G, which contribute significantly to public understanding of the operations or activities of government as discussed in *Hertzberg*, are more than sufficient to satisfy the public interest. 273 F. Supp. 2d 67 (D.D.C. 2003) at 85. In addition, the construction sounds, and the faces of the deceased are not a needed component to better understand FHWA operations. Thus, the case at hand sharply contrasts the non-lexical information disclosed in *Hertzberg. Id.* at 85. There is no marginal benefit to releasing the video given the already existing transcript outlined in Exhibits within the record and the extensive information provided by the video. FHWA Works "Caveman Bridge Rehabilitation Project", https://www.youtube.com/watch?v=itvuzuw10Kc. (Last visited Feb. 19, 2022).

The WPP has not demonstrated a minimal public interest in accessing the non-lexical media beyond the previously released transcript and therefore the video should be exempt from disclosure.

4. In balancing the public interest of WPP with the private interest of protecting surviving family members, the Court should determine the privacy interest to outweigh the former.

The standard for balancing the public and private interest weighs in favor of the disclosure, unless the privacy interest is substantial, the public interest is not clearly defined, and the agency has released information fulfilling the request. *See. Ripskis v. Dep't of Hous. & Urb. Dev*., 746 F.2d 1 (D.C. Cir. 1984). The Court balances these competing interests in deciding if the disclosure of the media would constitute a clearly unwarranted invasion of personal privacy. *NASA II*, 782 F. Supp. 628 (D.D.C. 1991) at 630.

In *NASA II,* the court utilized a balancing test to determine that disclosure of a tape exposing the audio of the Challenger astronauts before the explosion of their flight craft and subsequent deaths had a significant privacy interest outweighing the public interest in disclosure. *Id*. at 631.

As in *NASA II*, this Court is asked to balance the privacy interests of non-lexical information that has already been released in a lexical format against a speculative public interest in disclosure. *Id*. at 632. Through the transcript in Ex. E, FHWA has pointed to the workers mentions of not only their extensive connections to the area but also a great deal about their heritage, aspirations, lineage and personal lives, there is an established substantial privacy interest. *See. id.* Just as in *NASA II,* the demonstrated privacy interest of surviving family members in not having to be solicited due to intimate details shown by the video's disclosure is strong. See *id.* However, the petitioners explicitly stated public interest, as well as any conceivable public interest shown by disclosure is not. *See.* Martinez Decl. 13. The petitioners fail to show how the video clarifies an existing error in methodology, helps taxpayers understand

allocation of funds, and how content solely in the video serves as the basis for policy. Therefore, the WPP interest is met with the extensive amount of lexical information provided. *See.* Dexter Decl. ¶ 10-14.

Given the de minimis public interest of WPP and the substantial privacy interest of protecting surviving family members, the Court should determine the privacy interest to outweigh the former.

IV. CONCLUSION

Plaintiff WPP issued a Freedom of Information Act (FOIA) request to obtain the video depicting FHWA workers prior to the bridge collapse. Despite this request, the video is prohibited from disclosure due to statutory Exemption 6 which prohibits the release of information if it is determined that the files constitute an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Because the video constitutes a similar file covered by the FOIA statute, there is no demonstrated public interest in disclosure of the video, and there is a substantial privacy interest being implicated by the video's release, it is within the FHWA's authority to prohibit the video's release. As such, the Defendant, FHWA respectfully requests that the court deny laintiff's motion for summary judgment.

Respectfully Submitted,

/s/ Kendrick Peterson
Counsel for Defendant
Federal Highway Administration (FHWA)

Applicant Details

First Name	**William**
Last Name	**Petro**
Citizenship Status	**U. S. Citizen**
Email Address	**william.petro@duke.edu**
Address	**Address** Street **1420 Broad St** City **Durham** State/Territory **North Carolina** Zip **27705** Country **United States**
Contact Phone Number	**8134512000**

Applicant Education

BA/BS From	**University of Florida**
Date of BA/BS	**May 2020**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 11, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Duke Law Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Richman, Barak D.
richman@law.duke.edu
919-613-7244
Guttel, Ehud
guttel@law.duke.edu
919-613-8520
Powell, Jeff
POWELL@law.duke.edu
202-994-4691

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Will Petro
1420 Broad St
Durham, NC 27705

June 9, 2023

The Honorable Jamar K. Walker
United States District Court for the
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I write to express my sincere interest in clerking for your chambers for the 2024–25 term. I am a second-year law student at Duke Law, and I expect to graduate in May of 2024. Virginia is a special place to me. It is the centerpoint of my East Coast family and the location of most of our gatherings. I hope to live by my family, and I intend to remain and practice in the area.

As your clerk, I would bring an open mind and an eye for detail to each assignment. My Cuban-American upbringing instilled in me a strong interest in the law as a force for public good. Starting in college, I applied insights from economics and psychology to produce research on topics such as tort reform and criminal sentencing. In law school, I have sought opportunities to hone this multidisciplinary approach and further develop my writing skills.

My role as Executive Editor for the Duke Law Journal satisfies both objectives. It has given me the opportunity to support legal scholarship both in selecting pieces for publication and in editing these pieces line-by-line. Yet my most meaningful experiences have come from pro bono and government work, including with the Duke Law Innocence Project and the Federal Trade Commission. These experiences have culminated in an affinity for public service in challenging areas of law, such as the intersection of antitrust and technology.

Attached please find my resume, unofficial Duke Law transcript, and writing sample. Letters of recommendation from Professors H. Jefferson Powell, Ehud Guttel, and Barak Richman are included. I would be happy to provide any additional information you require. Thank you.

Sincerely,

Will Petro

WILL PETRO

1420 Broad Street
Durham, NC 27705

william.petro@duke.edu
(813) 451-2000

2535 Cedar Cypress Ct
Tampa, FL 33618

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor expected, May 2024
GPA: 3.76
Honors: Duke Law Journal, *Executive Editor*
Moot Court, *Board Member and Duke Jessup Cup Finalist*
Dean's Award, *Constitutional Law (Professor Powell)*
Activities: Duke Law Competition Law Society, *Co-President*
Duke Law ACLU, *Treasurer*
Duke Law Innocence Project, *Senior Case Manager*
Duke Latin American Law Students Association

University of Florida, Gainesville, FL
Bachelor of Arts in Economics, *summa cum laude*, May 2020
Bachelor of Science in Psychology, Behavior Analysis, May 2020
Minor in Business Administration
GPA: 3.78
Honors: Florida Blue Key
Dean's Medal for Excellence in Liberal Arts and Sciences
Thesis: *Determinants of State Healthcare Spending: An Analysis of Limits on Medical Malpractice Damages*
Activities: Student Government, *Director of Finance*
Bob Graham Center for Public Service, *Student Fellow*

EXPERIENCE

Covington & Burling LLP, Washington, D.C.
Summer Associate, May 2023 – Present
- Wrote memoranda on topics including antitrust, employment law, and class action litigation.
- Researched orders regarding resentencing motions for a pro bono criminal justice project.

Federal Trade Commission, Bureau of Competition, Washington, D.C.
Legal Intern, Technology Enforcement Division, June 2022 – July 2022
- Researched and wrote memoranda on antitrust and procedural topics related to "Big Tech."
- Conducted document review to assist attorneys with ongoing litigation.

Fernandez & Alvarez PA, Tampa, FL
Undergraduate Intern, June 2019 – August 2019
- Drafted complaints, subpoenas, and other documents under the supervision of practicing attorneys.
- Shadowed attorneys during court proceedings in matters of both criminal and civil law.

University of Florida Student Legal Services, Gainesville, FL
Research Intern, June 2018 – August 2018
- Manually collected data on five hundred felony cases in Alachua County court records from 2017.
- Analyzed data to identify sentencing trends based on factors including race and gender.

ADDITIONAL INFORMATION

Enjoy guitar, chess, and Tampa sports. Trained boxing under a Marine Corps Boxing Hall-of-Famer.

WILL PETRO

1420 Broad Street
Durham, NC 27705

(813) 451-2000
william.petro@duke.edu

2535 Cedar Cypress Court
Tampa, FL 33618

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Civil Procedure	Levy, M.	3.9	4.50
Criminal Law	Coleman, J.	3.3	4.50
Torts	Guttel, E.	3.9	4.50
Legal Analysis, Research, Writing	Hanson, M.	*Credit Only*	0.00

2022 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Legal and Policy Aspects of U.S. Civil-Military Relations	Dunlap, C.	CR	0.50

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Constitutional Law	Powell, J.	4.2	4.50
Contracts	Aguirre, E.	3.2	4.50
Property	Bradley, K.	3.5	4.00
Legal Analysis, Research, Writing	Hanson, M.	3.8	4.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Ethics and the Law of Lawyering	Richardson, A.	3.6	2.00
Evidence	Beskind, D.	4.1	4.00
First Amendment	Benjamin, S.	3.3	3.00
Corporate Crime	Buell, S.	3.8	4.00

2023 WINTERSESSION

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Internal Investigations	McDowell, V.	CR	0.50

Compliance with the Foreign Corrupt Practices Act	Zuercher, B.	CR	0.50

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Administrative Law	Benjamin, S.	3.7	3.00
Antitrust	Richman, B.	4.0	4.00
Introduction to Law & Economics	Guttel, E.	4.2	3.00
Constitutional Law II: Cases and Controversies	Powell, J.	4.0	2.00
Antitrust Course Plus	Richman, B.	CR	0.50
Independent Study	Buell, S.	CR	2.00

TOTAL CREDITS: 59.5
CUMULATIVE GPA: 3.76

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

I write to recommend Will Petro for a clerkship in your chambers. Will was a student in my Spring 2023 Antitrust class, in which he excelled. He earned a 4.0, which was the second-highest grade in the class, but his success was not a surprise. Will has impressed me throughout the year, and I expect him to be both a terrific clerk and an outstanding attorney.

I first met Will when he asked me to participate in some events for the Competition Law Society. The student group had been rather dormant in recent years, but Will injected new life and deep intellectual curiosity into its 2022-23 programming. He impressed me with both his energy and his commitment in producing quality events.

The same energy was reflected in Will's active participation in class discussions. He was consummately prepared, and he consistently articulated his ideas with impressive clarity. More significant, Will exhibited a real maturity in his engagement with antitrust law. He showed himself to be not just a diligent student but a budding professional who had a pointed interest and dedication in mastering antitrust law. I expect Will to continue shining as an antitrust attorney, and I will watch his career develop with interest.

For these reasons, Will would be a terrific clerk. He is mature, meticulous, and deeply dedicated to his work. He will execute his responsibilities to the fullest, and he will be an eager team player in your chambers. He will readily earn your trust, and you will be impressed with his abilities and his dedication to the task at hand.

In short, I hope you consider Will for a position in your chambers. I recommend him with genuine enthusiasm.

Sincerely yours,

Barak D. Richman
Edgar P. and Elizabeth C. Bartlett Professor of Law
Professor of Business Administration

Barak D. Richman - richman@law.duke.edu - 919-613-7244

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

I am delighted to write this letter of recommendation in support of Mr. William Petro's clerkship application. Mr. Petro was a student in my Torts class (Fall 2021). He impressed me as an extremely talented student. I was therefore very pleased to find out that he decided to apply for a judicial clerkship.

From the very beginning of the semester, Mr. Petro's class performance captured my attention. His answers to my questions were always supported by careful legal analysis. He was always on point and expressed his views clearly and concisely. Throughout the course, the other students and I tremendously benefited from Mr. Petro's participation and his original and illuminating contributions. I was thoroughly impressed by his ability to understand and analyze complex legal questions and his exceptional critical thinking. He received an "A" in my class—an excellent grade, which he clearly deserved. This semester, Mr. Petro is taking part in another course that I teach (Introduction to Law and Economics). In this course as well, Mr. Petro's performance stands out, and he is among the top students in class.

Mr. Petro's achievements in my classes follow his achievements prior to law school. In addition to his excellent academic accomplishments, he already gained significant experience as a legal intern, working, inter alia, for the Federal Trade Commission, a Tampa-based private law firm, and the University of Florida Student Legal Services.

Based on his performance in my class, as well as in other classes at Duke, it is amply clear that Mr. Petro is a very capable person with a gift for legal thinking. He is also a very responsible and thoughtful person. He is well liked and respected by his fellow students. By all indications I have, Mr. Petro is an excellent candidate for a judicial clerkship. He has the right attitude and the complete toolkit necessary to be a great legal intern. I believe that he will be an invaluable addition to any chambers. If you have any questions or need additional information, please do not hesitate to contact me by phone ((919) 613-8520) or by email (guttel@law.duke.edu).

Respectfully,

Ehud Guttel
Visiting Professor of Law

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: William Petro

Dear Judge Walker:

William Petro has asked me to write in support of his application to you for a clerkship. Mr. Petro took the introductory course in constitutional law with me in his first year and was a student in a seminar I taught this spring semester, so I know him reasonably well. His work is consistently superior, even when compared with very able classmates, and I am confident he would bring the same ability and energy to a clerkship. I recommend him to you with great enthusiasm.

In the spring semester 2022, I had ninety-six students in Constitutional Law I. As I teach it, the great majority of class meetings in that course involve students arguing different sides of a case or issue, so that at any given time the student who has the floor is responding not only to my questions, but also to classmates' arguments. Given the size of the class that spring, I assigned each student a single assignment for which he or she had primary responsibility. As is almost always true (regardless of class size), there were numerous opportunities for students to answer questions stumping the day's presenter and to contribute to the discussion in other ways. From the start, Mr. Petro was a steady, reliable contributor, obviously prepared and insightful, and ready to contribute when I threw out a question to the class. I expected that he would do well on the final examination, although of course such expectations do not always turn out to be correct.

Despite the importance of the classroom work, the final grade in Constitutional Law I is based primarily on the final examination, which I blind grade, and only after those scores are set do I learn the students' identities. Mr. Petro's answers were outstanding, both in his accuracy of analysis and in the thoughtful ways he handled issues for which strong arguments could be marshaled on either side. There were a couple of other extremely strong exams in a class that was, as a group, impressive, but I thought Mr. Petro clearly deserved the extremely high grade that secured him the Dean's Award for the course.

The seminar I taught this spring semester is called Constitutional Law II: Historic Cases and Contemporary Controversies. The students and I read eighteenth and nineteenth century materials, mostly but by no means all of them cases, and almost none of which the students would encounter in any other course. The objective is to develop some sense of how the constitution developed in its first century, and to reflect on how what we read may shed light on contemporary issues. As with any seminar, classroom participation is an important aspect of the class and of the final grade. Mr. Petro was an excellent contributor, and his seminar paper, "Neglected History in the Patent-Antitrust Debate: The Rise, Fall, and Revival of the Canon of Strict Construction," was a highly sophisticated, surefooted, and insightful examination of the interplay between legal hostility to monopolies and patent law from the English background through FTC v. Actavis in 2013. The paper is outstanding student work – as well written as it is analytically sound – and deserves publication. Again, Mr. Petro received the highest grade in the class.

I've spent enough time with Will Petro during office hours to have a good sense of his personality. He is serious, studious, mature, and genuinely passionate about the law. If I were involved in hiring for a government law office, as I have been several times in the past, he would be exactly the kind of person I would hope for us to hire. I strongly support his application for a clerkship, and I would be delighted to discuss him with you or someone else in your chambers if that would be of assistance.

Respectfully yours,

H. Jefferson Powell
Professor of Law

Jeff Powell - POWELL@law.duke.edu - 202-994-4691

Will Petro
1420 Broad Street
Durham, NC 27705
(813) 451-2000
william.petro@law.duke.edu

Writing Sample

The following is an unedited memorandum I wrote as a summer law clerk for the Federal Trade Commission. I have been given express permission to use it as a writing sample. In the memorandum, I was asked to discuss hypothetical proof requirements for plaintiffs under Section 2 of the Sherman Act. Factual context has been omitted to preserve confidentiality.

MEMORANDUM

To: [redacted]
From: Will Petro
Date: July 27, 2022
Re: Required Proof of Harm for Section 2 Monopoly Maintenance Claims

QUESTION PRESENTED

Does a plaintiff need to prove the competitive dynamics of a hypothetical market—one that would exist but for the defendant's conduct—to establish the anticompetitive conduct element of a Sherman Act § 2 monopoly maintenance claim?

BRIEF ANSWER

Most likely no. Courts frequently infer anticompetitive effect from other forms of evidence. Some authorities presume that certain types of conduct are anticompetitive. Others will infer harm from evidence of intent. Most will accept purely historical evidence. However, courts have varied in their proof requirements.

DISCUSSION

Monopoly maintenance claims generally do not require proof of hypothetical markets' competitive dynamics. Section 2 of the Sherman Act prohibits the monopolization of trade. 15 U.S.C. § 2. The offense consists of two elements: "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966). In other words, "the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct*." Verizon Commc'ns, Inc. v. Law Offs. of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).

Courts also describe this prohibited conduct as "exclusionary." See, e.g., United States v. Microsoft Corp., 253 F.3d 34, 58 (D.C. Cir. 2001) ("A firm violates § 2 only when it acquires or maintains . . . a monopoly by engaging in exclusionary conduct . . . ."). "Exclusionary conduct" is "conduct, other than competition on the merits or restraints reasonably 'necessary' to competition on the merits, that reasonably appears capable of making a significant contribution to creating or maintaining monopoly power." Barry Wright Corp. v. ITT Grinnell Corp., 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (quoting 3 Phillip E. Areeda & Donald F. Turner, Antitrust Law ¶ 626 (1978)). In Microsoft, the D.C. Circuit held that, "to be condemned as exclusionary, a monopolist's act must have an 'anticompetitive effect,'" meaning that it "must harm the competitive *process* and thereby harm consumers." Microsoft, 253 F.3d at 58.

Under the framework established in Microsoft, the plaintiff carries the burden of proving that the defendant's conduct "has the requisite anticompetitive effect." Id. at 58–59. The burden then shifts to the defendant to "proffer a 'procompetitive justification' for its conduct." Id. at 59. Finally, the plaintiff must show that the harms of the conduct outweigh any benefits under an analysis akin to the "rule of reason." Id.

Some landmark § 2 cases have dispensed with the anticompetitive conduct element in relatively perfunctory fashion. See, e.g., Grinnell, 384 U.S. at 571 ("We shall see that this second ingredient presents no major problem here, as what was done in building the empire was done plainly and explicitly for a single purpose."). Other cases have required much more substantial evidence of anticompetitive effect. See, e.g., FTC v. Qualcomm Inc., 969 F.3d 974, 990 (9th Cir. 2020). These cases reflect an ongoing divide in the modern case law.

I. Some authorities hold that certain types of conduct are presumptively anticompetitive.

One approach simply presumes that certain types of conduct are anticompetitive. For instance, some courts interpret Grinnell to hold that acquisitions of competitors may be presumptively anticompetitive. See, e.g., BRFHH Shreveport, LLC v. Willis Knighton Med. Ctr., 176 F. Supp. 3d 606, 622 (W.D. La. 2016) ("[T]he language in Grinnell suggests that acquisitions of viable competitors alone may establish the anticompetitive conduct element of a section 2 claim."); Clean Water Opportunities, Inc. v. Willamette Valley Co., 759 Fed. Appx. 244, 247 (5th Cir. 2019) (per curiam). Leading legal treatises also promote the use of presumptions in various contexts. See, e.g., Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application ¶ 701 (4th ed. 2020) (hereinafter Hovenkamp, Antitrust Law).

In Grinnell, the defendants' conduct included restrictive agreements that preempted competition in certain markets, anticompetitive pricing practices, and acquisitions of competitors. Grinnell, 384 U.S. at 566–70. The Supreme Court regarded each form of conduct, individually, as an "unlawful and exclusionary practice[]." See id. at 576 ("The restrictive agreements . . . were one device. Pricing practices that contained competitors were another. The acquisitions . . . were still another."). The Court explained that the acquisitions, in particular, "eliminated any possibility of an outbreak of competition that might have occurred." Id. It did not require proof, for example, that the acquired competitors would have affected prices, output, or the quality of services in the relevant markets. See id.

In their treatise on antitrust law, Areeda and Hovenkamp delineate the circumstances under which mergers are, or should be, presumptively anticompetitive. See Hovenkamp, Antitrust Law, ¶ 701. The treatise notes that, "[h]istorically and today, merging viable

competitors is a clear § 2 offense," and that the acquisition "of an actual or likely potential competitor is properly classified as anticompetitive." Id. ¶ 701a. It further suggests that "a monopolist's acquisition of a 'likely' entrant into the market in which monopoly power is held is presumptively anticompetitive." Id. ¶ 701d. Indeed, it proposes "a relatively severe approach to holders of significant monopoly power" under which "the acquisition of any firm that has the economic capabilities for entry and is a more-than-fanciful possible entrant is presumably anticompetitive." Id. (noting a single exception where "the acquired firm is no different in these respects from many other firms"). The authors caution, however, that this approach should not affect the scope of equitable relief granted. Id. ¶ 701j; see also Microsoft, 253 F.3d at 80 ("Absent some measure of confidence that there has been an actual loss to competition that needs to be restored, wisdom counsels against adopting radical structural relief.").

If a defendant's conduct is presumptively anticompetitive, it follows that evidence of the conduct itself obviates further proof requirements, including proof of anticompetitive effect. Under Microsoft's burden-shifting approach, however, courts might still allow defendants opportunities to rebut such presumptions. See Microsoft, 253 F.3d at 59. If so, plaintiffs likely would still need to provide evidence of harm to competition to demonstrate that this harm outweighs any procompetitive benefits. See id.

II. Most authorities do not require evidence of a hypothetical "but-for" market to prove anticompetitive effects.

Even if a court does not presume that a defendant's conduct is anticompetitive, it may accept evidence of harm other than that of a hypothetically reconstructed market. Indeed, most courts appear willing to infer harm to competition from more retrospective evidence. See, e.g.,

United States v. Dentsply Int'l, Inc., 399 F.3d 181, 191–96 (3d Cir. 2005); McWane, Inc. v. FTC, 783 F.3d 814, 837 (11th Cir. 2015).

For instance, a court may credit evidence that a defendant's conduct limited consumer choice. See Dentsply, 399 F.3d at 194. In Dentsply, the defendant required dealers to whom it sold its dental products to refrain from offering rival product lines. Id. at 185. The Third Circuit required that the government prove that the defendant's market power "was used 'to foreclose competition.'" Id. at 191 (quoting United States v. Griffith, 334 U.S. 100, 107 (1948)). It explained that "[t]he test is not total foreclosure, but whether the challenged practices bar a substantial number of rivals or severely restrict the market's ambit." Id. (citing LePage's Inc. v. 3M, 324 F.3d 141, 159–60 (3d Cir. 2005); Microsoft, 253 F.3d at 69). The court did not require proof that alternative means of competition were impossible, but merely that they were impractical or ineffective. See id. at 193.

Moreover, the court's analysis appeared to equate the defendant's exclusion of rivals with "harm to competition" itself. See id. at 191. Indeed, its discussion focused primarily on rivals' loss of access to the market. See id. ("[The conduct] helps keep sales of competing teeth below the critical level necessary for any rival to pose a real threat to [the defendant]'s market share. As such, [the conduct] is a solid pillar of harm to competition."). The court identified the subsequent limitation of consumer choice as "[a]n additional anti-competitive effect." Id. at 194. It credited evidence that end-users requested alternative product lines, but that dealers were unable to comply due to the defendant's conduct. Id. This evidence, coupled with the effective exclusion of competitors, was sufficient to prove anticompetitive effect. Id. at 191–96.

At minimum, courts do not require definitive proof of harm. See McWane, 783 F.3d at 838–40. In McWane, the defendant implemented an exclusive dealing arrangement in response

to a competitor's entry into the domestic pipe fittings market. Id. at 820–21. It argued that the government "did not prove harm to competition with sufficient certainty." Id. at 836. The Eleventh Circuit noted that "[t]he governing Supreme Court precedent speaks not of 'clear evidence' or definitive proof of anticompetitive harm, but of 'probable effect.'" Id.

The court inferred that the defendant's prices were supracompetitive by comparison with the market for imported fittings. Id. at 838. These prices did not fall even in states where a competitor entered the market. Id. at 838–39. The defendant argued that this evidence was insufficient to prove that the conduct caused the price behavior. Id. at 839. The court held that, "[w]hile it is true that there could have been other causes for the price behavior, the government need not demonstrate that the [conduct] was the sole cause." Id.

In other words, the court was willing to infer harm to consumers based on the market conditions at present. See id. Such an inference would be inconsistent with any requirement that plaintiffs prove, for instance, that a competitor would have succeeded in driving down prices in a market absent the defendant's conduct. These cases illustrate the successful use of historical evidence, unlike that of a hypothetical "but-for" market.

III. Some authorities allow inferences of harm from evidence of intent.

Evidence of intent might also obviate the need for additional proof of harm. Intent has consistently played some role in antitrust law. See, e.g., Bd. of Trade of City of Chi. v. United States, 246 U.S. 231, 238–39 (1918); Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 602–03 (1985). Early in the history of antitrust jurisprudence, the Supreme Court identified "[t]he history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, [and] the purpose or end sought to be attained," all as "relevant facts." See Bd. of Trade, 246 U.S. at 238. While not dispositive, "knowledge of intent may help the court to

interpret facts and to predict consequences." Id. In monopolization cases, intent is "relevant to the question whether the challenged conduct is fairly characterized as 'exclusionary' or 'anticompetitive.'" Aspen Skiing Co., 472 U.S. at 602.

More recent cases illustrate the role of intent in the § 2 context. In McWane, the Eleventh Circuit relied on earlier case law to conclude that "the clear anticompetitive intent behind the [defendant's conduct] also support[ed] the inference that it harmed competition." McWane, 783 F.3d at 840. The court highlighted testimony from the defendant's executives indicating that its conduct was deliberately intended to "prevent [its competitor] from 'reach[ing] any critical market mass that w[ould] allow them to continue to invest and receive a profitable return.'" Id. "Although such intent alone is not illegal," the court held that "it could reasonably help the Commission draw the inference that the witnessed price behavior was the (intended) result of the [defendant's conduct]." Id. In other words, evidence of intent can allow adjudicators to infer that the defendant's conduct caused harm. See id.

In Microsoft, the D.C. Circuit noted that a court's proper focus in § 2 cases "is upon the effect of th[e defendant's] conduct, not upon the intent behind it." Microsoft, 253 F.3d at 59. However, it acknowledged that evidence of intent can help courts "understand the likely effect of the monopolist's conduct." Id. (citing Bd. of Trade, 246 U.S. at 238). Indeed, the court used this evidence to characterize the defendant's communications to another company as exclusionary threats. See id. at 77–78.

The defendant, Microsoft, was concerned that the creation of cross-platform interfaces would undermine its monopoly in the operating systems market. Id. at 77. Microsoft made repeated comments criticizing Intel's development of a Windows-compatible Java Virtual Machine. Id. After Microsoft insinuated that it would provide support to one of Intel's rivals,

Intel discontinued its efforts. Id. The court noted that "Microsoft's internal documents and deposition testimony confirm[ed] both the anticompetitive effect and intent of its actions." Id. While not explicit, the court seemingly used this evidence of intent to refute the defendant's claim that the communications were merely advisory. See id. (noting that the defendant "lamely characterize[d] its threat to Intel as 'advice'"). The difference in characterization was apparently relevant to the conclusion that the defendant violated § 2. See id. at 77–78. While the role of intent in § 2 cases is not precisely delineated, the use of intent evidence is inconsistent with a requirement that plaintiffs prove harm in the "but-for" world.

IV. Other authorities apply more demanding inquiries of harm to competition.

Not all courts appear willing to infer harm to competition from the same types of evidence. Some cases, especially at the intersection of antitrust and patent law, have demanded atypical forms of proof. See, e.g., Rambus Inc. v. FTC, 522 F.3d 456, 463–67 (D.C. Cir. 2008); Qualcomm, 969 F.3d at 990–91.

In some instances, courts may explicitly require evidence related to hypothetical market conditions absent the defendant's conduct. See Rambus, 522 F.3d at 464–65. In Rambus, the Federal Trade Commission, following administrative proceedings, determined that the defendant had failed to disclose its patent interests in technology adopted by a private standard-setting organization ("SSO"). Id. at 461. The FTC found that, but for the defendant's deceit, the SSO would have either excluded the patented technologies from its standards or demanded assurances of fair, reasonable, and nondiscriminatory ("FRAND") license fees. Id. However, in its remedial opinion, the FTC noted insufficient evidence that the SSO would have adopted other technologies. Id. at 462. Furthermore, the defendant argued that the FTC's alternative finding did not actually involve an antitrust violation. Id.

The D.C. Circuit agreed. Id. It held that, "[e]ven if deception raises the price procured by a seller, but does so without harming competition, it is beyond the antitrust laws' reach." Id. at 464. The court found that the failure to secure FRAND commitments did not constitute harm to the competitive process itself and, therefore, did not violate antitrust law. See id. at 466. It also noted that, if the SSO, "in the world that would have existed but for [the defendant]'s deception, would have standardized the very same technologies," the deception could not have caused harm to competition. Id. at 466–67. Therefore, the FTC needed to prove, with some measure of likelihood, that the SSO would have adopted competitors' technologies as standards. See id.

Courts may also distinguish harm to consumers from harm to competition, thereby enhancing proof requirements. See Qualcomm, 969 F.3d at 990. In Qualcomm, the Ninth Circuit held that "[a]llegations that conduct 'has the effect of reducing consumers' choices or increasing prices to consumers do[] not sufficiently allege an injury to competition . . . [because] [b]oth effects are fully consistent with a free, competitive market.'" Id. (alteration in original) (quoting Brantley v. NBC Universal, Inc., 675 F.3d 1192, 1202 (9th Cir. 2012)). Rather, the plaintiff must prove that these harms "are the result of a less competitive market due to either artificial restraints or predatory and exclusionary conduct." Id. (citing Ohio v. Am. Express Co., 138 S. Ct. 2274, 2288 (2018)). The court cautioned that "novel business practices—especially in technology markets—should not be 'conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.'" Id. at 990–91 (citing Microsoft, 253 F.3d at 91).

The government alleged that several of the defendant's practices caused harm to competition in the modem chip markets. Id. at 986. The district court agreed, focusing much of its analysis on purported harms to original equipment manufacturers ("OEMs"). Id. at 992. The

Ninth Circuit criticized these findings, emphasizing that the OEMs were the defendant's customers, not competitors. See id. The court found that "[t]hese harms, even if real, [we]re not 'anticompetitive' in the antitrust sense . . . because they d[id] not involve restraints on trade or exclusionary conduct in 'the area of effective competition.'" Id. (citing Am. Express, 138 S. Ct. at 2285). This characterization of direct customers as outside of the relevant market appears to contradict other cases which posit consumer harm as a primary concern of the antitrust laws. See, e.g., Microsoft, 253 F.3d at 58 (equating "anticompetitive effect" with conduct that "harm[s] the competitive *process* and thereby harm[s] consumers"). It is unclear whether this point was essential to the outcome of the case. See Qualcomm, 969 F.3d at 992 (assuming, without explicitly accepting, that the harms to OEMs were "real"). Nevertheless, prospective plaintiffs should be aware that the same standards of proof are not universally applied.

CONCLUSION

Plaintiffs likely do not need to prove the competitive dynamics of a hypothetical market to establish the anticompetitive conduct element of a § 2 monopoly maintenance claim. Prospective plaintiffs should be aware, however, that courts apply varying standards of proof.

Applicant Details

First Name	**Madison**
Last Name	**Phillips**
Citizenship Status	**U. S. Citizen**
Email Address	**madisonphillips@uchicago.edu**
Address	**Address** Street **9705 Hidden Valley Road** City **Vienna** State/Territory **Virginia** Zip **22181** Country **United States**
Contact Phone Number	**7039537161**

Applicant Education

BA/BS From	**Brown University**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Chicago Law School** **https://www.law.uchicago.edu/**
Date of JD/LLB	**June 3, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Chicago Journal of International Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Bradley, Curtis
bradleyca@uchicago.edu
Huq, Aziz
huq@uchicago.edu
773-702-9566
Ginsburg, Thomas
tginsburg@uchicago.edu
773-834-3087

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Madison A. Phillips
9705 Hidden Valley Road
Vienna, VA 22181
(703) 953-7161
madisonphillips@uchicago.edu

April 30, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I am strongly interested in clerking for you because of the opportunity to contribute directly to the day-to-day functioning of our legal system and to learn about it from your point of view as a judge. I am also very interested in clerking in my home state of Virginia, where I was born and raised.

My resume, writing sample, and law school transcript are enclosed. The pending grades on my transcript will be posted by the end of May 2023. I will forward my updated transcript when the grades are posted. My letters of recommendation will arrive under separate cover and are from Professors Curtis A. Bradley, Thomas Ginsburg, and Aziz Huq.

Please let me know if you require additional information.

Sincerely,

Madison A. Phillips

Madison A. Phillips

9705 Hidden Valley Road, Vienna, VA 22181 • (703) 953-7161 • madisonphillips@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, IL
J.D. with Honors, June 2023

- Journal: *Chicago Journal of International Law* (CJIL), Comments Editor
- Proposed the selected topic of CJIL's 2023 Symposium, *Free Speech*

Brown University, Providence, RI
B.A. in Political Science, International Relations and Comparative Politics track, May 2018

- *The Critical Review*, Editor-in-Chief

EXPERIENCE

Eviction Legal Helpline, Virginia Poverty Law Center, *Volunteer*, February 2023 – present

- Helping process messages from tenants seeking legal advice on eviction
- Opening case files in online case management system to prepare them for attorney review

Debevoise & Plimpton, New York, NY, *Summer Associate*, Summer 2022

- Researched and completed writing assignments on issues involving federal mining laws and international arbitration
- Assisted in drafting a bill of particulars and researched state civil procedure rules
- Proofread documents to support litigation filings

Professor Curtis A. Bradley, The University of Chicago Law School, Chicago, IL, *Research Assistant*, June 2021 – January 2022

- Researched and reported on foreign relations law topics, such as the role of legislative oversight in nuclear nonproliferation laws
- Coded data on international commitments that the United States has undertaken through non-binding joint statements with other countries

Independent Research Assistant, Washington, D.C., February 2020 – May 2020

- Researched current foreign policy of the United States, South Korea, and North Korea to support the book project of a co-founder of 38 North, a website that publishes informed analysis of issues in and around North Korea
- Contributed research to a database of news stories, research articles, and official documents on the Trump administration's North Korea policy

38 North, **The Stimson Center**, Washington, D.C., *Research Assistant*, May 2019; *Research Intern*, September 2018 – May 2019

- Wrote a 1,500-word report on current diplomacy between the two Koreas
- Drafted and submitted Freedom of Information Act requests

INTERESTS

- I enjoy watching NHL hockey, pursuing film photography, and caring for my cat
- I am a dual citizen of the United States and Denmark

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

Name: Madison Alyssa Phillips
Student ID: 12286315

Scott C. Campbell, University Registrar

University of Chicago Law School

Degrees Awarded

Degree: Doctor of Law
Confer Date: 06/03/2023
Degree GPA: 179.281
Degree Honors: With Honors
J.D. in Law

Academic Program History

Program: Law School
Start Quarter: Autumn 2020
Program Status:Completed Program
J.D. in Law

External Education

Brown University
Providence, Rhode Island
Bachelor of Arts 2018

Beginning of Law School Record

Autumn 2020

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law Lior Strahilevitz	3	3	177
LAWS	30211	Civil Procedure Emily Buss	4	4	177
LAWS	30611	Torts Adam Chilton	4	4	180
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	177

Winter 2021

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law Jonathan Masur	4	4	177
LAWS	30411	Property Aziz Huq	4	4	182
LAWS	30511	Contracts Omri Ben-Shahar	4	4	177
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	177

Spring 2021

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	178
LAWS	30713	Transactional Lawyering David A Weisbach	3	3	180
LAWS	40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	176
LAWS	43201	Comparative Legal Institutions Thomas Ginsburg	3	3	178
LAWS	44201	Legislation and Statutory Interpretation Jennifer Nou	3	3	179

Summer 2021

Honors/Awards
The Chicago Journal of International Law, Staff Member 2021-22

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	178
LAWS	42201	Secured Transactions Erin Casey	3	0	W
LAWS	43230	Public International Law Thomas Ginsburg	3	3	177
LAWS	53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton	2	2	178
LAWS	94130	The Chicago Journal of International Law Anthony Casey	1	1	P

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	40201	Constitutional Law II: Freedom of Speech Geoffrey Stone	3	3	183
LAWS	46101	Administrative Law David A Strauss	3	3	177
LAWS	53221	Current Issues in Criminal and National Security Law	3	3	182
Req Designation:		Meets Writing Project Requirement Michael Scudder Patrick Fitzgerald			
LAWS	53398	Communications and Advocacy for Lawyers Marsha Nagorsky	3	3	182
LAWS	94130	The Chicago Journal of International Law Anthony Casey	1	1	P

Date Issued: 06/05/2023

KEY TO TRANSCRIPT ON FINAL PAGE

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

Name: Madison Alyssa Phillips
Student ID: 12286315

Scott C. Campbell, University Registrar

University of Chicago Law School

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	42301	Business Organizations Saul Levmore	3	3	183
LAWS	43269	Foreign Relations Law Curtis Bradley	3	3	180
LAWS	47301	Criminal Procedure II: From Bail to Jail Sharon Fairley	3	3	178
LAWS	53219	Counterintelligence and Covert Action - Legal and Policy Issues Stephen Cowen Tony Garcia	3	3	178
LAWS Req Designation:	94130	The Chicago Journal of International Law Meets Substantial Research Paper Requirement Anthony Casey	1	1	P

Summer 2022

Honors/Awards
The Chicago Journal of International Law, Comments Editor 2022-23

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	41101	Federal Courts Curtis Bradley	3	3	182
LAWS	43284	Professional Responsibility and the Legal Profession Anna-Maria Marshall	3	3	180
LAWS	53263	Art Law William M Landes Anthony Hirschel	3	3	179

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	179
LAWS	53462	Tragedies and Takings: Selected Topics in Land Use and Resource Allocation Lee Fennell	3	3	179
LAWS	53463	Privacy and Modern Policing Vikas Didwania	3	3	182
LAWS Req Designation:	53482	Resolving Mass Tort Liability Meets Writing Project Requirement Amanda Johnson	3	3	179

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	41601	Evidence John Rappaport	3	3	179
LAWS	43251	Advanced Legal Writing Elizabeth Duquette	2	2	182
LAWS	53354	Cybercrime William Ridgway	3	3	181
LAWS	53499	Advanced Advocacy: Building and Using Your Advocate's Toolbox Robert Cheifetz	3	3	180

Send To:
Madison Phillips
9705 Hidden Valley Road
Vienna, VA
22181

End of University of Chicago Law School

Date Issued: 06/05/2023

KEY TO TRANSCRIPT ON FINAL PAGE

THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://csl.uchicago.edu/policies/disclosures.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I — **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP — **Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR — **No Grade Reported:** No final grade submitted
- P — **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q — **Query:** No final grade submitted (College only)
- R — **Registered:** Registered to audit the course
- S — **Satisfactory**
- U — **Unsatisfactory**
- UW — **Unofficial Withdrawal**
- W — **Withdrawal:** Does not affect GPA calculation
- WP — **Withdrawal Passing:** Does not affect GPA calculation
- WF — **Withdrawal Failing:** Does not affect GPA calculation

Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H — Honors Quality
- P* — High Pass
- P — Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
http://registrar.uchicago.edu.

Revised 09/2016

Curtis A. Bradley
Allen M. Singer Professor of Law
University of Chicago Law School
1111 E. 60th St,
Chicago, IL 60637
bradleyca@law.uchicago.edu

May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Madison Phillips for a clerkship with you.

Madison worked as one of my research assistants this past year, and she was also a student in my course this Spring on U.S. foreign relations law. She is smart, careful, and hard-working, and I think she will be an excellent law clerk.

As my research assistant, Madison researched and wrote memoranda on a variety of topics, including issues relating to legislative oversight of executive action. Her research was extremely useful to my writing projects, and I especially appreciated her willingness to dig into the details of statutory schemes, something that not all law students (or lawyers, for that matter) are patient enough to do. She was also very good about communicating with me at each stage of the projects.

Her grades have been consistently strong. Each semester, her grades have been at or above our median, and many of them have been substantially above it. In my foreign relations law course, she received a 180—a score that placed her in the top 20% of that class. In several of her other courses, she has received a 182 or 183, which would have placed her at or near the top of those class groups.

Madison also has extensive writing and editing experience. She served as the Editor-in-Chief of a journal at Brown University, she did research and writing for a website associated with a Washington, D.C. think tank, and she has served as an editor on our law school's international law journal. She will gain additional writing experience this summer working at Debevoise.

For all of these reasons, I highly recommend her for a clerkship.

Sincerely,

Curtis A. Bradley

Professor Aziz Huq
Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
huq@uchicago.edu | 773-702-9566

May 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Madison Phillips (University of Chicago Class of 2023), as a law clerk in your chambers for the 2023-24 year or beyond. I know Madison from having taught her as a student in two classes during her 1L year (2021-22): a remotely taught 1L Property class in the Winter Term, and Constitutional Law Class (on Equality and Due Process) in the Spring Term, again taught by Zoom. Madison entered an exceptional performance in Property, and had respectably strong performance in Constitutional Law. Consistent with this, her overall performance at the law school has been characterized by a large number of truly exceptional grades, coupled with some strong grades that still demonstrate a clear understanding of the material at issue. Further, it is the sort of transcript that leaves no doubt about her capacity to perform in the high-stress context of a clerkship. Madison, in addition, has obtained a coveted journal position with the Chicago Journal of International Law. She also has started to acquire an array of quite different kinds of legal experience necessary, all with an eye to pursuing ultimately a career in government service.

Based on my experience with Madison in class and beyond, my review of her exams in both classes, and my consideration of her transcript (which shows a growing academic confidence and strength), I believe that Madison is a very strong candidate for a judicial clerkship, and will be terrific to have in chambers. I wholeheartedly endorse her application in that regard.

Let me start with academics. As noted above, I have taught Madison in two 1L classes: Property and “Constitutional Law III” (which covers Equal Protection and Due Process jurisprudence). She performed exceptionally well in the first of these: Her grade placed her in the top five percent in a class of about 70 people. She also offered a very creditable performance in the first-year Constitutional Law class. I looked back at her Property exam, and my impression that Madison will be an excellent legal analyst and writer was more than confirmed. The exam was full of careful and lucid reasoning. It showed great care in weaving details from the prompt with the doctrine. Further, Madison offered fair-minded consideration of both sides of many controversial arguments. The exam, notwithstanding the pressure-cooker conditions of its production, was also a very strong piece of writing.

A review of her overall transcript suggests that Madison has been able to obtain some very high grades—in my Property class, but also in Torts and Transactional Lawyering—in the first year. In her second year, Madison has put in an event more impressive performance. Three of the four grades she received in the winter quarter last year, for example, were very high “A” grades. It is striking that two of them were in federal constitutional and statutory law classes: These show that Madison is capable of mastering, and even excelling, in the kind of legal reasoning that is at the core of the federal clerk’s tasks. Moreover, neither Geof Stone nor Michael Scudro nor yet Patrick Fitzgerald (the professors in those classes) is exactly known as a pushover! In the following term, she again scored really impressive grades in Corporations and Foreign Relations Law—and then the next term, knocked it out of the park in both Federal Courts and Professional Responsibility. In all of these classes, her grades were absolutely stellar. The balance of Madison’s transcript beyond my classes thus demonstrates not only her clear capacity to handle and excel in the work of a federal clerkship as a pure intellectual matter, but also a particular aptitude for the kind of law that is central to the role of federal clerks. And it is also telling that Madison is able to score highly in both private and public law classes—which suggests a measure of intellectual breadth and flexibility.

To place this in context, it is worth saying something about my exams and about the Chicago grading system as a whole. On the first, I write complex, issue-intensive exams that demand an ability to read a detailed fact pattern and immediately perceive not just the presence of a legal issue, but also a host of interactions between the legal issue and the facts, and also the several alternative (often outcome dispositive) ways of framing the issue. I identified ex ante 200 distinct points and subpoints that could be raised based on the exam prompts, and graded students accordingly. This approach means I obtain a dispersion of grades that ensures meaningful distinction. So I can be very certain that Madison’s property exam was just terrific as an instance of legal reasoning, as explained above. In respect to the grading system as a whole, furthermore, it is worth noting that that the precision with which I can locate Madison in the class as a whole likely works to her detriment in comparison to students of schools that use a grading system that blurs their likely location in their class as a whole. As you likely know from having our graduates as clerks before, Chicago uses a very strict curve round a median score of 177 (which is a B in our argot). There is rarely any large movement from the median, and any grade above 180 is a sterling one, awarded only to a small slice of any

given class. Chicago also grades on a normal distribution, lending additional clarity and focus to its scores. Moreover, because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. We are hence able to very finely distinguish between students at all levels—which our peers cannot say because they use a system that obscures differences between students below the top rank. My sense is that Madison is at a minimum in the top third of the class in her first year, but it's also my expectation that she will improve as time goes on and graduate at the higher end of that range (especially if she continues her streak of very, very strong grades).

At Chicago more generally, Madison has obtained a place on the Chicago Journal of International Law. In the past year, she has taken a leadership role in respect to the journal, managing the process of student comment publication. She then spent her 2L summer at Debervoise in New York, working on both state and federal law questions. I have no doubt this helped build her legal skills, and that she will graduate a truly excellent lawyer. Further, it is my belief that Madison is likely to go into public service, likely in the Foreign Service or State Department, at some point in the future. Before law school, she worked on issues related to our foreign policy on North Korea. She has since kept up her interest in international law and politics in several ways during law school, including through work with my colleague Curt Bradley.

Based on all the evidence at my disposal, I am certain that Madison will be a very strong law clerk. Clearly, she is more than capable of handling the work entailed, and she will be a solid presence in chambers. I am thus an unequivocal supporter of her application. I would be happy to answer any questions you have and can be reached at your disposal at huq@uchicago.edu.

Sincerely,

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law

Aziz Huq - huq@uchicago.edu - 773-702-9566

Professor Tom Ginsburg
Leo Spitz Professor of International Law,
Ludwig and Hilde Wolf Research Scholar
and Professor of Political Science
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
tginsburg@uchicago.edu | *773-834-3087*

May 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Madison Phillips, a member of the class of 2023, for a clerkship in your chambers. Madison is a very strong candidate. She is very bright and an excellent writer, whom I recommend very highly.

I first met Madison during her 1L year when she enrolled in my course in Comparative Legal Institutions during the Spring Quarter. This course is one of our first-year electives, designed to encourage thinking about law from a broad interdisciplinary perspective. Mine looks at law across time and space, integrating literatures from political science and economics along with more conventional legal materials. We survey, among other legal systems, those of imperial China and classical Islam, focusing on judicial institutions and their core structures. Madison was an enthusiastic class participant who always added value to the class discussion, and demonstrated the ability to think creatively in dealing with novel material. Her exam was one of the better ones, above median in the class of about 80 excellent students.

This year, Madison enrolled in my large course in Public International Law, which covers an array of topics in the field, including foreign relations law and the status of international law in the United States. Madison was again a strong student, who was always prepared, and a superb addition to the classroom. She easily soaked up an unfamiliar area of law. I must admit that my exam in this course was not very well designed, and there was massive grade compression in the class. Madison was at the median of this group of about 50, which I should add was one of the best I have ever taught, so this is a fine achievement.

I have also worked with Madison on the Chicago Journal of International Law, where she is serving as a Comments Editor. She has very strong writing and editorial skills, and will be excellent at working with junior colleagues to improve their work. I have also been impressed with the collegiality of this particular group of editors at the Journal, for which I have served as faculty advisor for a number of years. This group has managed a number of novel challenges in a resilient and effective manner.

Madison is a team player who is very personable, and gets along with others. She is a fun person to be around, who communicates intelligence and good humor, and I am confident that others in chambers will enjoy working with her. She will be a very easy person to mentor, and you will be able to count on her as someone whose drafts will be very strong and responsive.

The bottom line is that Madison Phillips is a terrific law student, who will be a smart, hardworking, and focused clerk, as well as a superb lawyer thereafter. I recommend her very highly and urge you to interview her. You will not be disappointed.

Please do not hesitate to contact me for further information or detail.

Sincerely,
Tom Ginsburg

Madison A. Phillips

9705 Hidden Valley Road, Vienna, VA 22181 • (703) 953-7161 • madisonphillips@uchicago.edu

WRITING SAMPLE

I prepared the attached writing sample for my Legal Research & Writing class at the University of Chicago Law School. In this assignment, I was asked to write a brief for plaintiff-appellee Katara Hakoda on a fictional Federal Arbitration Act (FAA) claim and an Equal Pay Act (EPA) claim in the Fifth Circuit without having read the appellant's brief. To create a ten-page writing sample, I omitted the tables of contents and authorities, the statements of jurisdiction and the issues, and the summaries of the facts and procedural history. I also omitted the conclusion and the certificate of compliance. I received feedback from my school's writing coach on my brief.

In this assignment, Katara Hakoda worked as a Systems Engineer for the interstate oil and gas pipeline company Appa Transport Systems (Appa). The main task of Appa's Systems Engineers was to remotely direct the flow of oil and gas through Appa's interstate pipelines. Hakoda also worked four night shifts per month and made quarterly out-of-state client visits. Hakoda brought an EPA claim in federal district court after she learned that Appa was paying Hakoda less than Long Feng, a newly-hired male Systems Engineer, despite their identical responsibilities. Appa moved to compel arbitration of Hakoda's EPA claim because of an arbitration clause in her employment contract. The district court denied Appa's motion on the grounds that Hakoda was a transportation worker exempted from the FAA. The district court granted summary judgment for Hakoda on the grounds that Appa's sole affirmative defense to the EPA claim failed as a matter of law. Appa appealed both rulings.

My citations to the assignment's record took the form of the letter "R" followed by the page number of the record being cited.

SUMMARY OF THE ARGUMENT

The district court correctly denied Appa's motion to compel arbitration because Hakoda is a transportation worker covered by the § 1 exemption of the FAA. First, Hakoda is actually engaged in the movement of goods in interstate commerce because she directs the active flow of oil and gas through interstate pipelines. R3. Second, the Supreme Court has long emphasized the role that oil and gas pipeline companies play in interstate commerce. Hakoda's employment at a company heavily involved in interstate commerce confirms that she is a transportation worker.

The district court also correctly granted Hakoda's motion for summary judgment on her EPA claim on the grounds that Appa's sole affirmative defense fails as a matter of law. Appa argued that Feng's higher salary and lack of night shift work at his previous job with Bosco Logistics were "factor[s] other than sex" that justified the pay disparity with Hakoda under the EPA. 29 U.S.C. § 206(d)(1). First, Appa's argument is pretext for sex discrimination. The EPA is hostile to pretextual affirmative defenses. Appa's argument that it paid Feng more to entice him to leave his job at Bosco is pretext because the record does not show Appa made any effort to retain Hakoda as an employee despite the "tight" labor market that causes Appa and Bosco to "regularly" have "difficulty finding adequate numbers of talented engineers." R8.

Second, an employee's prior salary is not a valid "factor other than sex." The EPA's purpose is to counter the historical trend of employers paying female employees less than male employees for the same work. Considering Feng's prior salary embodies the very consideration of market forces that the EPA is meant to protect against.

Third, Feng's prior lack of night shift duties at Bosco is not a valid "factor other than sex." Appa assumed that Feng would not perform the same night shift duties as Hakoda at the same rate of pay, so it offered Feng a higher salary than it paid Hakoda. R8. But the Supreme

Court disproved of an employer taking advantage of female employees' willingness to perform the same work for less pay in a case involving sex disparities in night shifts and compensation. As a result, the district court correctly granted Hakoda's motion for summary judgment on her EPA claim.

ARGUMENT

I. Standard of review

A district court's denial of a motion to compel arbitration is reviewed *de novo*. *Janvey v. Alguire*, 847 F.3d 231, 240 (5th Cir. 2017). A district court's order granting summary judgment is reviewed *de novo*. *In re Louisiana Crawfish Producers*, 852 F.3d. 456, 462 (5th Cir. 2017). Summary judgment is appropriate where "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Castellanos-Contreras v. Decatur Hotels, LLC*, 622 F.3d 393, 397 (5th Cir. 2010). Because the parties agreed to a stipulated set of material facts, R4, a grant of summary judgment depends on Hakoda being entitled to judgment as a matter of law. *Id*. at 397.

II. The district court correctly found that Hakoda is a transportation worker under the FAA's residual clause because Hakoda is engaged in the movement of goods in interstate commerce

A. The FAA's residual clause exempts transportation workers from judicial enforcement of arbitration clauses in their employment contracts

The FAA "compels judicial enforcement of a wide range of written arbitration agreements." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001). But it exempts the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from judicial enforcement of arbitration clauses in those contracts. 9 U.S.C. § 1. The final clause of § 1, covering "any other class of workers engaged in

foreign or interstate commerce," is referred to as the "transportation worker exemption" or the "residual clause." *Eastus v. ISS Facility Servs., Inc.*, 960 F.3d 207, 209 (5th Cir. 2020).

The Fifth Circuit explained that the transportation worker exemption applies to employees "actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are." *Id.* (quoting *Rojas v. TK Commc'ns, Inc*., 87 F.3d 745, 748 (5th Cir. 1996)). While the Supreme Court has not defined the term "transportation workers," the Fifth Circuit has recognized that the Supreme Court's interpretation of the term is "fully consistent" with its own "actually engaged" analysis. *Brown v. Nabors Offshore Corp.*, 339 F.3d 391, 394 (5th Cir. 2003). If the employee "herself was engaged in the movement of goods," then the employee is a transportation worker. *Eastus*, 960 F.3d at 211.

In residual clause cases, the Fifth Circuit analyzes the employee's tasks to decide if she qualifies for the exemption. Other circuits also consider the business and industry in which the employee works. Hakoda is a transportation worker under both approaches.

B. Hakoda is actually engaged in the movement of goods in interstate commerce because of her direction of oil and gas through interstate pipelines

The Fifth Circuit analyzes the employee's particular role to decide if she falls within the residual clause. It found that an airline ticketing and gate agent supervisor was not a transportation worker because she herself "was not engaged in an aircraft's actual movement in interstate commerce." *Eastus*, 960 F.3d at 208-12. The Fifth Circuit also decided that a radio disc jockey was not covered by the residual clause because transportation workers must be "actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are." *Rojas*, 87 F.3d at 748 (quoting *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 601 (6th Cir. 1995)).

"[T]here is a distinction between handling goods and moving them." *Eastus*, 960 F.3d at 211. This distinction comes from "Section 1 of the FAA's enumeration of seamen and not longshoremen, who are the workers who load and unload ships." *Id.* Because the airline supervisor in *Eastus* handled passengers' luggage as needed, the Court compared her role to that of a longshoreman. *Id*. at 208, 211. It declined to apply the exemption because the employee's "duties could at most be construed as loading and unloading airplanes." *Id*. at 212. "Loading or unloading a boat," like an airplane, "prepares the goods for or removes them from transportation," which does not justify applying the exemption. *Id.*

As a Systems Engineer, Hakoda does not prepare oil for or remove it from pipelines but "directs the flow of oil in the pipelines to different locations." R1. She has control over where the oil goes and exercises that control to help the oil move from production facilities to refineries and storage facilities. *Id*. The pipelines that she manages run across states, from Louisiana into Texas and Mississippi and from Texas into Oklahoma. R2. Unlike longshoremen who load and unload ships, Hakoda begins her work after the oil has already been loaded into the pipeline. She is engaged in the oil's "actual movement in interstate commerce." *Eastus*, 960 F.3d at 212.

Hakoda is "actually engaged in the movement of goods in interstate commerce in the same way that seamen and railroad workers are." *Rojas*, 87 F.3d at 748 (quoting *Asplundh*, 71 F.3d at 601). Hakoda's role is comparable to that of ship captains, who would be covered by § 1 as seamen. Hakoda makes "real-time decisions as to where active flows of oil and gas should be directed." R3. Like Hakoda, ship captains make real-time decisions as to what routes to take to get to a destination. Systems Engineers also cause "oil and gas to arrive at certain facilities and not others," just as captains cause their ships to arrive at certain docks and not others. *Id.* Hakoda's ability to transport oil while she remains in one location does not make her any less of

a transportation worker. She is actually engaged in the movement of oil in interstate commerce. Hakoda is a transportation worker covered by the FAA's § 1 exemption.

The Fifth Circuit has not addressed whether or not an individual employee must herself travel interstate to be considered a transportation worker, but other circuits' holdings support Hakoda's claim. Hakoda regularly crosses state lines for her work because she must travel quarterly to client sites in Louisiana, Mississippi, and Texas to adjust Appa's on-site equipment. R1-R2. Still, other circuits have held that no interstate travel is necessary for an employee to be a transportation worker. The Third Circuit declined to limit the transportation worker exemption to "cover only those workers who physically transported goods across state lines" because Congress "would have phrased the FAA's language accordingly" if it had intended such a limitation. *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593-94 (3rd Cir. 2004), cert. denied, 543 U.S. 1049 (2005). The Ninth Circuit held that last-mile delivery drivers do not need to cross state lines while making deliveries to be considered transportation workers. *Rittmann v. Amazon.com, Inc*., 971 F.3d 904, 919 (9th Cir. 2020), cert. denied, 141 S. Ct. 1374 (2021). The Third Circuit and Ninth Circuit holdings applied to this case prohibit finding that Hakoda's remote direction of interstate pipeline flows disqualifies her from being a transportation worker.

C. Appa's heavy engagement in interstate commerce requires applying the transportation worker exemption to Hakoda

The Fifth Circuit has not addressed whether or not an employer's involvement in interstate commerce determines the employee's status as a transportation worker, but other circuits have considered the roles of the employer and of the employer's industry in interstate commerce. *See Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 22-23 (1st Cir. 2020) (explaining that "[t]he nature of the business for which a class of workers perform their activities must inform" the exemption analysis); *see also Singh v. Uber Technologies Inc.*, 939 F.3d 210, 227

(3rd Cir. 2019) (explaining that the discussion of whether or not an employee belongs to a class of transportation workers may be informed by "information regarding the industry in which the class of workers is engaged").

The Supreme Court's long history of emphasizing the role that oil and gas pipelines play in interstate commerce strongly supports finding Appa is involved in interstate commerce. The Supreme Court noted the "interstate commerce aspects of the natural-gas business" and the role that an interstate pipeline company plays in the business. *Phillips Petroleum Co. v. State of Wis*., 347 U.S. 672, 682-83 (1954). While the issue in *Phillips Petroleum* concerned the jurisdiction of the Natural Gas Act, 15 U.S.C. §§ 7171 *et seq*., the district court here favorably cited *Phillips Petroleum* because it proves that the Supreme Court has historically recognized that oil pipeline companies are involved in interstate commerce. *See* R3.

Under the approach taken by the First Circuit and the Third Circuit, Hakoda is a transportation worker because of Appa's involvement in interstate commerce as an oil and gas pipeline company. Appa is engaged in the flow of interstate commerce every day that oil flows through its interstate pipelines. As the Supreme Court found, the oil pipeline industry is a quintessential example of an industry that operates in interstate commerce. By acting as a "frontline employee" directing the flow of oil through Appa's interstate pipelines, R3, Hakoda is a transportation worker actually engaged in the movement of goods in interstate commerce.

III. The district court correctly granted Hakoda's motion for summary judgment on her EPA claim because Appa's sole affirmative defense fails as a matter of law

Binding precedent confirms that Appa's sole affirmative defense to Hakoda's EPA claim fails as a matter of law. EPA claims are evaluated using a burden-shifting framework. First, the plaintiff must make a prima facie case showing that his or her employer compensates male and female employees differently for equal work. *Lindsley v. TRT Holdings, Inc*., 984 F.3d 460, 466

(5th Cir. 2021). After the plaintiff makes a prima facie case of discrimination, the burden shifts to the defendant to prove one of four enumerated affirmative defenses justifying the pay disparity. *Id.* at 467; *see also Washington Cnty. v. Gunther*, 452 U.S. 161, 167 (1981) (quoting 29 U.S.C. § 206(d)(1)). The fourth affirmative defense is that the disparity was due to any "factor other than sex." 29 U.S.C. § 206(d)(1). Here, the district court correctly granted Hakoda's motion for summary judgment. First, the parties do not dispute that Hakoda has made a prima facie case. Second, Feng's prior salary and lack of night shift work is not a valid "factor other than sex" under Supreme Court and Fifth Circuit precedent, so Appa's sole affirmative defense fails as a matter of law.

A. Appa's sole affirmative defense fails as a matter of law because it violates the EPA's broad purpose and is pretext for discrimination

Congress enacted the EPA in response to "a serious and endemic problem of [sex-based] employment discrimination in private industry." *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974). As part of solving this serious issue, the Fifth Circuit recognized that the EPA does not permit pretextual affirmative defenses to prima facie cases of discrimination. In *Siler-Khodr*, the Fifth Circuit found that an employer's affirmative defense, which was based on a male counterpart's prior salary and market forces, was "pretext" and "easily rebutted." *Siler-Khodr v. Univ. of Texas Health Sci. Ctr. San Antonio*, 261 F.3d 542, 549 (5th Cir. 2001), cert. denied, 537 U.S. 1087 (2002); *see also Plemer v. Parsons-Gilbane*, 713 F.2d 1127, 1136 (5th Cir. 1983) (explaining that the trial court should have considered the plaintiff's evidence of the defendant's justification for a pay differential being "pretextual").

Appa's asserted affirmative defense is invalid because it is pretext for discrimination. Appa argues that it paid Feng more than Hakoda to lure Feng from his job at Bosco, where he had a higher salary and did not work night shifts. But the record contains no evidence that Appa

considered protecting against Bosco trying to lure Hakoda from her job at Appa. *See* R7-R9. Talented Systems Engineers are rare in the "tight" Louisiana labor market. R8. Hakoda is a talented Systems Engineer, as shown by her "excellent" and otherwise positive quarterly reviews, and Appa was already attempting to fill a Systems Engineer vacancy with Feng. *See* R7. Bosco paid its Systems Engineers without night shifts more than Appa paid its own Systems Engineers with night shifts. R8. Hakoda leaving Appa for a higher-paying job at Bosco would compound the "difficulty finding adequate numbers of talented engineers" with which companies such as Appa "regularly" struggled. *Id*. But Appa continued to pay Hakoda less than Feng, who performed identical tasks in a competitive labor market. *See* R7-R9. Appa's lack of interest in retaining Hakoda proves that its asserted consideration of Feng's prior salary and lack of night shift work is pretext for sex discrimination.

B. Considering Feng's prior salary as a valid "factor other than sex" would perpetuate discrimination in violation of the EPA

Feng's prior salary is not a valid "factor other than sex" because the Fifth Circuit held that hiring incentives driven by market forces do not count as a "factor other than sex." In *Siler-Khodr*, a University of Texas (UT) hospital hired and paid a male doctor $20,000 more per year than it paid a female doctor who performed equal work. *Siler-Khodr*, 261 F.3d at 544. The male doctor's wife also worked at the university at the time. *Id.* UT stated that it offered the man a higher salary so that he would not seek employment in another city, causing his wife to leave the university. *Id.* UT argued, "given that the salary paid to a new employee is driven almost entirely by market forces[,] the University must expend resources to attract qualified individuals in a market where other organizations have the same goal." *Id*. at 549. The Fifth Circuit rejected UT's "market forces" argument because it "simply perpetuates the discrimination that Congress wanted to alleviate when it enacted the EPA." *Id.*

Applying *Siler-Khodr* here shows that Appa's defense is not a "factor other than sex." Feng earned more at Bosco than Hakoda did at Appa, R7-R8, just as the male doctor earned more at his prior job than the female doctor did at UT. Bosco and Appa "regularly" have difficulty hiring "adequate numbers of talented engineers," just as UT "must expend resources to attract qualified individuals in a market where other organizations have the same goal." R8; *Siler-Khodr*, 261 F.3d at 549. But the Fifth Circuit in *Siler-Khodr* affirmed the lower court's ruling that such "market forces" perpetuate sex discrimination. *Siler-Khodr*, 261 F.3d at 549. Finding that Feng's prior salary is a valid "factor other than sex" would perpetuate the discrimination that the EPA was enacted to end.

C. Required night shifts are not a "factor other than sex"

Appa argues that Feng's satisfaction with not needing to work night shifts at Bosco is a "factor other than sex" that "both itself counts as a permissible defense and renders the consideration of Feng's past salary permissible." R6. First, even if Feng's past salary may be considered in regard to Feng's lack of night shift work, *Siler-Khodr* shows that Feng's past salary cannot be considered a "factor other than sex" on its own. In other words, Appa may cite Feng's prior salary only to serve as a reference point for the number that Appa had to beat in its salary offer to persuade Feng to leave Bosco. Relying on Feng's prior salary as an independent "factor other than sex" would violate *Siler-Khodr.*

Second, a difference in night shift work between Feng's old job and his current job is not a permissible "factor other than sex." The Supreme Court in *Corning Glass* found that the defendant employer had not met its burden of proof in showing that a higher salary for men working night shifts "was in fact intended to serve as compensation for night work" instead of merely constituting "an added payment based upon sex." *Corning Glass,* 417 U.S. at 204. The

Court found that the "differential arose simply because men would not work at the low rates paid women inspectors, and it reflected a job market in which Corning could pay women less than men for the same work." *Id*. at 205.

Similarly, the differential between Feng and Hakoda arose because Appa's employees responsible for filling the Systems Engineer vacancy assumed that Feng would not work at the lower rate paid to Hakoda. The differential also reflects a job market in which Appa can pay Hakoda less than Feng for the same work. *See* R8. "That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work." *Corning Glass*, 417 U.S. at 205. Appa's affirmative defense that Feng's prior lack of night shifts is a "factor other than sex" is not supported by the Supreme Court's jurisprudence and fails as a matter of law.

The district court correctly granted Hakoda's motion for summary judgment because Appa's sole affirmative defense fails as a matter of law.

Applicant Details

First Name	**Christian**
Middle Initial	**A**
Last Name	**Pierre-Canel**
Citizenship Status	**U. S. Citizen**
Email Address	**cpierrecanel@uchicago.edu**
Address	**Address** Street **8 E. 9th Street Apt. 1710** City **Chicago** State/Territory **Illinois** Zip **60605** Country **United States**
Contact Phone Number	**2398870987**

Applicant Education

BA/BS From	**University of Florida**
Date of BA/BS	**May 2015**
JD/LLB From	**The University of Chicago Law School** **https://www.law.uchicago.edu/**
Date of JD/LLB	**June 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Chicago Journal of International Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Masur, Jonathan
jmasur@uchicago.edu
773-702-5188
Huq, Aziz
huq@uchicago.edu
773-702-9566
Davidson, Adam
davidsona@uchicago.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Christian A. Pierre-Canel
cpierrecanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street, Chicago, IL 60605

June 11, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Chicago Law School seeking to serve in your chambers as a clerk in 2024 or any year thereafter. My desire to clerk for you stems from my lifelong passion for public service and steadfast commitment to the pursuit of justice. As a non-traditional student who devoted six years to a career in the United States Congress prior to matriculating to law school, I believe my professional and academic record have helped cultivate skills that will complement the exceptional culture of your chambers.

Upon earning my bachelor's degree in 2015, I held several administrative and policy roles the United States Congress until the summer of 2021. This stage of my career helped me build the foundation needed to face the rigors of the legal field. From introducing legislation to address food insecurity to drafting statements for committee hearings, my time in Congress has directly affected my ability to confidently engage with my University of Chicago Law School coursework. As a student, I have honed my acumen in the law through experiential opportunities. This can be seen through my time serving as a judicial extern in the U.S. District Court for the Northern District of Illinois. Further, as a current Summer Associate at Sidley Austin, LLP, I am actively building off of my previous experiences to apply my skillset to challenging litigation matters for the firm's clients. In all, I have come to approach complex legal issues incisively with a balanced sense of creativity and practicality.

My time in law school has proven that holistic success is achieved when academic merit is matched with leadership and service. Bestowed to those who exemplify leadership, character, and initiative, I was selected as one of three Tony Patiño Fellows-Elect in the law school's Class of 2024. Further, from Hate Crime Law to Race and Criminal Justice Policy, I have enrolled in courses to learn the law with an eye towards how societal issues can be addressed by members of the legal profession. The Hon. Judge Michael Scudder of the United States Court of Appeals for the Seventh Circuit, who taught my National Security Law course, has offered to serve as a reference on my behalf if you would like to further discuss any aspects of my candidacy for this clerkship. Judge Scudder can be reached via email at Michael_Scudder@ca7.uscourts.gov.

If I am fortunate enough, clerking in your chambers would be the next chapter in my lifelong journey of serving the public through the law. I am confident that my passion and skillset can be of added value to the everyday practicalities of chamber life. It would be a privilege to work for you. Thank you for your consideration.
Sincerely,
Christian A. Pierre-Canel

Christian A. Pierre-Canel

cpierrecanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street Chicago, IL 60605

EDUCATION

The University of Chicago Law School — **Chicago, IL**
Juris Doctor — **June 2024**
Honors: Tony Patiño Fellowship, Fellow-Elect
Journal: Chicago Journal of International Law, Comments Editor
Research Assistant: Jonathan S. Masur, John P. Wilson Professor of Law, Director of the Wachtell, Lipton, Rosen & Katz Program in Behavioral Law, Finance and Economics
Activities: Black Law Students Association, American Constitution Society, Institute of Politics Leaders of Color

University of Florida — **Gainesville, FL**
Bachelor of Arts in Political Science, *Cum Laude* — **May 2015**
Activities: Department of Political Science, Junior Research Fellow, Teaching Assistant

WORK EXPERIENCE

Summer Associate, Sidley Austin, LLP — **May 2023 – Aug 2023**
- Drafts memos and legal briefs to assist firm associates and partners in ongoing litigation and investigatory matters
- Supports ongoing litigation matters by conducting research for active litigation matters for the firm's clientele

United States District Court for the Northern District of Illinois — **Chicago, IL**
Judicial Extern, Chambers of Hon. Chief Judge Rebecca R. Pallmeyer — **June 2022 – Sept. 2022**
- Conducted legal research pertaining to ongoing trials assigned to the docket of the Chief Judge
- Drafted memoranda and presented legal analysis on ongoing cases directly to the Chief Judge to be used for rulings

United States Congress — **Washington, DC**
Senior Legislative Assistant, Office of Congressman Al Lawson (FL-05) — **Jan 2019 – Aug 2021**
- Managed a portfolio of over 10 policy issues including agriculture, education, and the judiciary
- Served as the liaison between the Congressman and the House Committee on Agriculture
- Drafted legislation on behalf of the Congressman to be introduced in the House of Representatives

Scheduler, Office of Senator Bill Nelson (FL) — **Mar 2018 – Jan 2019**
- Created and managed the Senator's daily schedule consisting of over 50 official and personal engagements a week
- Maintained communication with foreign, federal, state, and private stakeholders to ensure the Senator's policy and political priorities were properly executed and efficiently achieved
- Served as a primary contact for the Senator regarding time sensitive issues, daily activities, and long-term projects
- Coordinated meetings for the Senator's Washington, DC staff consisting of over 40 individuals

Special Assistant, Office of Senator Bill Nelson (FL) — **Aug 2016 – Mar 2018**
- Managed internal communication and paper flow between the Senator and his personal, state, and committee staff consisting of 80 individuals
- Collaborated with the state outreach team to implement innovative methods for the Senator to maintain connections with constituents via speeches, multimedia presentations, and interpersonal engagements

Legislative Assistant, Office of Congressman Chaka Fattah (PA-02) — **May 2016 – Aug 2016**
- Oversaw a legislative portfolio that included foreign affairs, homeland security, and immigration
- Staffed the Congressman at meetings and events focusing on an array of policy issues

AWARDS AND AFFILIATIONS

Sidley Austin, LLP Diversity and Inclusion Scholarship Recipient — **August 2022**
Public Policy and International Affairs Fellowship — **June 2014**
Congressional Black Caucus Foundation. — **May 2015**
University of Florida Hall of Fame — **Spring 2015**

SKILLS AND INTERESTS

Languages: Haitian Creole (professional working proficiency), French (elementary proficiency)
Photography: portraiture, landscape, street, and documentary – featured in the Washington Post Express

THE UNIVERSITY OF CHICAGO

Name: Christian A Pierre-Canel
Student ID: 12335019

Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

University of Florida
Gainesville, Florida
Bachelor of Arts 2015

Beginning of Law School Record

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law William Baude	3	3	173
LAWS	30211	Civil Procedure Diane Wood	4	4	172
LAWS	30611	Torts Saul Levmore	4	4	176
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	178

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law Jonathan Masur	4	4	174
LAWS	30411	Property Aziz Huq	4	4	173
LAWS	30511	Contracts Douglas Baird	4	4	175
LAWS	30711	Legal Research and Writing Aneil Kovvali	1	1	178

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	178
LAWS	30713	Transactional Lawyering David A Weisbach	3	3	176
LAWS	40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	175
LAWS	43227	Race and Criminal Justice Policy Sonja Starr	3	3	177
LAWS	44201	Legislation and Statutory Interpretation Farah Peterson	3	3	177

Summer 2022

Honors/Awards
The Chicago Journal of International Law, Staff Member 2022-23

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	42301	Business Organizations Anthony Casey	3	3	176
LAWS	43200	Immigration Law Amber Hallett	3	3	174
LAWS	45801	Copyright Randal Picker	3	3	176
LAWS	53704	Hate Crime Law	3	3	175
Req Designation:		Meets Writing Project Requirement Juan Linares			
LAWS	94130	The Chicago Journal of International Law Anthony Casey	1	1	P

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	174
LAWS	45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	181
LAWS	46101	Administrative Law David A Strauss	3	3	173
LAWS	53221	Current Issues in Criminal and National Security Law Michael Scudder	3	3	178
LAWS	94130	The Chicago Journal of International Law Anthony Casey	1	1	P

THE UNIVERSITY OF CHICAGO

Name: Christian A Pierre-Canel
Student ID: 12335019

Law School

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	41601	Evidence John Rappaport	3	3	172
LAWS	43218	Public Choice and Law Saul Levmore	3	3	173
LAWS	53485	Constitutional Procedure Ramon Feldbrin	2	0	
LAWS	94130	The Chicago Journal of International Law	1	1	P
Req Designation:		Meets Substantial Research Paper Requirement Anthony Casey			

End of Law School


THE UNIVERSITY OF
CHICAGO

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer a strong recommendation of Christian Pierre-Canel for a judicial clerkship. Christian is a very good student, a dynamic leader, and a tremendously thoughtful and mature individual. He is the type of student whom any professor would love to have in class and whom any law school in America would be proud to call its graduate. He is destined for a prominent career as a first-rate lawyer. In the nearer term, I am confident that he will thrive as a law clerk.

Christian was a student in my Criminal Law class in Winter 2022, his second quarter in law school, and from the first moment he spoke up it was impossible not to be impressed by him. On the second day of class, I called on him to discuss a complex and ambiguous question related to federal sentencing law. This is the type of problem that can vex even experienced law students, and here it was the beginning of Christian's second quarter. At this point, most first-year students are completely at sea. But not Christian. His answer was crisp and incisive, but also thoughtful and carefully considered. It was evident as he spoke that he was both bright and diligent. He was able to reason through a legal thicket on his feet, but he was prepared to do so because he had read and thought carefully about the subject before class. He was approaching the topic with a seriousness of purpose that few students can muster at the beginning of their time in law school. I called on Christian four other times during the course of the quarter: once to discuss the common law of premeditated murder; once to analyze the subjective element of recklessness and how it relates to intoxication; once to describe the proximate cause rules surrounding felony murder; and once to discuss the law of self-defense and the use of deadly force. His answers on these occasions—and more importantly, the ways that he reasoned through difficult hypotheticals and complicated bodies of doctrine on his feet—were highly impressive. He concluded the quarter by writing a strong and successful exam.

Perhaps more importantly, in the course of Criminal Law, and in the months afterward, I had the opportunity to get to know Christian quite well outside of class. Simply put, he is one of the most mature, thoughtful students I have ever taught. We have had one serious conversation after another about important and challenging topics—race and policing in America, the criminal legal system and how criminal law is taught in law schools, the state of legal education, Congressional politics and partisanship, and many others. Christian brought a wealth of interesting and creative ideas to every conversation. His was an active mind at work; he had thought through many of these issues in depth and arrived at his own conclusions, rather than merely parroting the popular narrative. His approach was also conscientious and profoundly thoughtful in a manner one does not always get from law students who are no more than a year or two out of college. Christian was a true adult, and he approach complex questions of law and policy with an adult's sophistication and sensibility.

Of course, this is not merely metaphor. Before he ever came to law school, Christian had a distinguished career as a staff member on Capitol Hill, working for Senator Bill Nelson and several Members of Congress. These are high-pressure environments, where everything must be perfect the first time and even small mistakes can cause a staff member to be fired in an instant. Moreover, working for Congress requires the ability to manage dozens of different tasks simultaneously while still paying close attention to the details of each individual matter. (I worked on the Hill for a year between college and law school, so I know this firsthand.) Yet it would be difficult to overstate Christian's success in this environment. To illustrate, the final position he held, Senior Legislative Assistant to Congressman Al Lawson, is a big deal—he was the senior policy aid, covering essentially every important issue area, for a Member of Congress. For Christian to have thrived in such an environment and to have risen to such professional heights is remarkable and speaks to his intelligence, his diligence, and his work ethic. I have every reason to believe that he will similarly thrive in the demanding environment of a judicial clerkship.

Christian Pierre-Canel is bright, diligent, and a true adult. He is also a genuine leader; it is no surprise that his fellow students have trusted him with important roles in numerous student organizations, including the Black Law Students Association. He is destined for a prominent career in the law, and in the shorter term I am confident that he will succeed as a judicial clerk. What is more, it is impossible to get to know him without enjoying spending time with him. He will be an asset to whichever chambers is fortunate enough to hire him. I recommend him warmly.

Sincerely,

Jonathan Masur
John P. Wilson Professor of Law

Jonathan Masur - jmasur@uchicago.edu - 773-702-5188

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to strongly recommend Christian Pierre-Cancel of the University of Chicago Law School Class of 2023, for a clerkship in your chambers. I know Christian through having taught him in two classes—Property and Constitutional Law: Equal Protection and Due Process—in his first year of law school. Christian has a very respectable law-school record, which has earned him a place on the Chicago Journal of International Law. He has repeatedly shown himself to be a valuable and effective interlocutor in class. My sense is that law-school exams don't capture his powerful intellect, and his savvy about the dynamics of how and why law impacts on real-world practices and interests. This is not perhaps surprising. Unlike many law students, Christian comes to law school after a hiatus. He worked in Congress for several years, and so has not been as steeped in the habits of exam-preparation as many of his peers. I think this has disadvantaged him on exams, although he outshines his peers in conversation and in classroom contributions. But he has been steadily improving, and has recently obtained some truly stand-out grades. For that reason, I am very confident that Christian would be an excellent law clerk. Not only would he be plainly up to the mark in terms of the sheer legal work, but he would bring a very valuable wide-angle perspective on law and its effects to your chambers. Indeed, more generally, my sense is that he would be a marvelous and uplifting presence in any professional setting. I therefore would highly recommend him to you for consideration as a law clerk.

Let me speak first to my specific experience in the classroom with Christian before addressing his larger academic record. As I noted above, I taught Christian in two first-year classes—Property and Constitutional Law: Equal Protection and Due Process. I will be candid here: He scored a respectable grade in the latter class, but a low grade in the former. (Note that I am very confident in offering a recommendation for him despite this!). To put that score in context, his grade in Property is among the lowest that Christian has obtained at law school. But I do not think it reflects his skill or intelligence. Reviewing his exams, I have the impression that Christian—especially at the beginning of his law school career—was just beginning to reacquaint himself with the techniques of taking exams, and the tricks of writing for a professor. Indeed, it is important to note that Christian's grades have shown a very clear upward trajectory since the Property class. His first quarters' grades in 1L year were his weakest, and his grades at the end of the 1L year and the beginning of the 2L year were his strongest. This is a common pattern. In my experience, students who have accrued substantial work experience are often (perversely) disadvantaged by the fact that they have not been able to keep up their exam-taking skills. Beyond the context of my classes, moreover, Christian has performed solidly in a range of classes. He has obtained very solid grades, for example, in Legal Research and Writing, as well as a striking and resounding "A" in a recent trade-mark class. Looked at in the round, therefore, I think that Christian's grades more than adequately establish his strength as a lawyer.

The other factor here is Christian's performance in class. In both the Property and the Constitutional Law classes, I rely mainly on Socratic questions, only allowing a bit of discussion when it its warranted. But I quickly came to understand that Christian had keen insights into many questions of history and public policy, and that I could rely on him to make measured and always-illuminating contributions on many questions. His contributions were always smart, and often added value by drawing attention to additional facts or consideration. This same trait was evident, in addition, in the conversations I have had with him out of class. Christian is plainly richly informed and is able to mobilize his knowledge and experience with poise and effective grace. Even if he took too some time to find his bearings in exam settings, he has always had confidence and effectiveness in ordinary conversation, and has always flexed a powerful intellect in those contexts.

A few words on Chicago's grading system are warranted here. Unlike its peers, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is not large movement from the median. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is simply not possible with a grading system of the kind used by some of our peer schools, which are seemingly designed to render ambiguous differences between the second tier of students and the third- and fourth-tiers. Students such as Christian, who progress from lower to higher grades across the first few years of law school, are among those most disadvantaged by our grading arrangement.

Christian would bring to a clerkship, beyond his legal skills, a wealth of practical, relevant experience. He worked in Congress for six years for a number of representatives and Senators. Having spoken to him about his time on the Hill, I know that he has a large pool of law-relevant experience concerning how legislation is made and then implemented (often, by the executive rather than by the courts in the first instance). These years of experience have given him a rich well of knowledge and skill in respect to dealing with very different ideological perspectives. It means he has resources for navigating tricky interpersonal situations that other law graduates utterly lack. (It also helps that Christian is by temperature thoughtful, generous in his attitude to others, and predisposed to listening: I saw him forge relations with a range of law students on different points of the ideological spectrum. This is hardly a given, and indeed quite the challenge, these days. From conversations with him, it is my sense that this capacity bubbles up out of his experience growing up in a Haitian household in southwest Florida—and being seen as "Haitian" in some contexts, and "Black" in others. This split in social contexts gave him a sensitivity, I think, to difference that remains valuable today). He has deepened these skills while at Chicago by working for the Hon. Rebecca Pallmeyer over the summer of 2022, and by acquiring a much-sought place on one the handful of journals at the law school, the Chicago Journal of International Law. He

has also worked with the Institute of Politics, which is part of the larger university, mentoring other students.

Based on all this evidence, I offer my strong support for Christian's application. He will be a terrific and thoughtful clerk, who will add much to a chambers. I would be happy to answer any questions you have about his candidacy, and can be reached at your disposal at huq@uchicago.edu.

Sincerely,

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Christian Pierre-Canel for a clerkship in your chambers. I got to know Christian as the advisor for his comment for the Chicago Journal of International Law. Christian had an extensive career as a legislative aid in Congress before coming to law school, and that experience shows in both his work and in conversing with him. He has a keen ability to think about a problem from numerous angles and at times his writing has a clarity and concision that few law students can match.

Perhaps the most important skill that his experiences have given him though is persistence. As his transcript suggests, Christian did not exactly take to law school classes like a fish to water. But instead of resigning himself to that fate, he seemingly sought as much advice as he could get. Indeed, the first time I met him was during his 1L year in this very context. The then-BLSA Academic Chair was a former student of mine and recommended that he talk to me about exam strategy. While I hope that conversation was fruitful for him, I'm afraid I didn't have too much to add to the panoply of other advice he had already sought from not only other students, but from his other professors with whom he went over his past exams. Those professors, he explained, had largely said that his weakness was in test-taking and not legal knowledge. My experience as his comment advisor fully confirmed this. In conversing with Christian, it is immediately obvious that he doesn't lack legal knowledge or an ability to apply legal doctrine. As we talked through his comment, he would easily explain intricacies of UN procedure and how they might affect his proposals for an international law solution to global policing failures.

That is why I have not been surprised to see the upward trajectory in his transcript. Christian has the intellectual ability to succeed as a law clerk in spades, and he combines that with a willingness to recognize his weaknesses and a seemingly indefatigable desire to address them.

I happily recommend him for a clerkship in your chambers.

Sincerely,

Adam Davidson

Adam Davidson - davidsona@uchicago.edu

Christian A. Pierre-Canel
cpierrecanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street, Chicago, IL 60605

University of Chicago Law School

National Security Law

Winter Quarter 2023

Instructor: Hon. Judge Michael Scudder, United States Court of Appeals for the Seventh Circuit

Paper Instructions: Students were instructed to draft a Supreme Court opinion on a topic based on the themes discussed in class. Students were told to form their own fact pattern and to be creative while applying real law to the issues. The legal analysis was also able to include legal policy considerations.

Supreme Court of the United States

Peterson v. Miles

Justice Levmore delivered the opinion of the Court in which The Chief Justice, Justice Baude, Justice Masur, Justice Wood, Justice Picker, and Justice Weisbach join.

In the thirty years since the September 11 Attacks on our nation's soil, the Court has spilled relatively little ink over the very real concerns arising from United States (U.S.) citizens who seek to align themselves with non-state actors against our nation in the ever-mutating Global War on Terror. Now, we are asked to determine whether the Federal government violated petitioner Mitchell Peterson's Fifth Amendment right to Due Process by detaining him indefinitely upon being declared an "enemy combatant" of the U.S. pursuant to 50 U.S.C. §1543 (hereinafter Title X or Title X of the Authorization for Use of Military Force of 2022).

In prior proceedings the United States Court of Appeals for the Eleventh Circuit held for the respondent-appellee; the Federal government. In doing so, the Eleventh Circuit argued that United States District Court for the Southern District of Florida erred in ruling that the petitioner-appellant's Due Process rights were violated because of his inability to challenge the circumstances of his arrest and subsequent detention at the Fort Jefferson Naval Base in the Dry Tortugas National Park off the coast of Key West, Florida. We granted the petitioner's writ of certiorari to address the sensitive nature of this serious claim of civil rights violations by the Federal Government especially as our nation's Global War on Terror prepares to enter its third decade.

We find error in the Eleventh Circuit's analysis of the law as applied to this case and vacate and remand their judgement for further proceedings. Today, nearly 20 years after ruling in favor of the petitioner in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), we once again affirm the constitutional protection of due process that all citizens are afforded by the Fifth Amendment.

Recent global occurrences remind us of that physical and existential vulnerabilities of terrorism are alive and well. These threats are often products of long seeded cultural, religious, and political disputes that have formed well before the founding of our nation. Moreover, we acknowledge that the dangers of these threats do not always stem from outside of our boarders but are often seeded within our very own heartland. However, regardless of the origins of these ills, no label placed on an individual by the Executive branch may strip the constitutional rights bestowed to those that are born or naturalized into the status of "citizen" of the United States of America.

Since 2020, the world has witnessed an increase in hostilities originating from a network of pro-Russian supremacy terrorist groups known collectively as "Odin-Russe".[1] Their aim is to support the Russian Federation's attempts of colonizing weaker nation-states by instigating conflicts to destabilize the civil and economic status of the developed world.

[1] The term Odin-Russe is a self-coined moniker combing the root word for Russia and Mon to mean "One Russia".

Tragically, on September 27, 2022, Odin-Russe claimed responsibility for the mass biological weapon attack on the island of Tongatapu in the Pacific Kingdom of Tonga. Within two weeks, 50,000 of the island's 75,000 residents were killed as a result of the attack. Recently, the decades long increases in global temperatures and atmospheric moisture levels have enabled humans to contain and control several deadly species of the parasitic genus of fungi known as cordyceps.[2] The lethality and high R0[3] of cordyceps has led the World Health Organization to call for a global ban on all uses of the parasitic fungus in concentrated forms. The aim of this international moratorium is to prevent any potential future outbreaks.

In the face of this ban, fringe terror organizations such as Odin-Russe have found no issue using cordyceps as a part of their arsenal to harm the global community. Following the September 27th attack on Tonga, the United Nations (UN) was forced to recruit member-states to establish a 15,000 square mile blockade around the archipelago island to prevent the biological threat from spreading. Further, the UN General Assembly has formally condemned the Odin-Russe terrorist attack and their ideology.

Domestically, the Federal Government spared little time in preparing defensive measures to protect the homeland against similar biological assaults in the name of the

[2] Koral Jedrejko et. al, *Effect of Cordyceps spp. and Cordycepin on Functions of Bones and Teeth and Related Processes: A Review*, NATIONAL INSTITUTES OF HEALTH: NATIONAL LIBRARY OF MEDICINE, (Dec. 27, 2022).
[3] Paul L. Delamater et. al, *Complexity of the Basic Reproduction Number (Rv0)*, EMERGING INFECTIOUS DISEASES, CENTER FOR DISEASE CONTROL AND PREVENTION, 25 1, Jan. 2019

Odin-Russe cause. The Department of Defense has also positioned members of the U.S. Armed Forces in strategic locations around the globe in case offensive measures against the terror network are called for. The bulk of the U.S.'s anti-Odin-Russe legislative package has mirrored the Authorization for the Use of Military Force of 2001 in response to the September 11 Attacks that took the lives of 2,996 individuals in four coordinated attacks across the northeastern United States.

On November 1, 2022, Congress passed the Authorization for the Use of Military Force of 2022 (AUMF 2022). Upon enactment, the AUMF 2022 granted the President authority to "use all necessary and appropriate force against those… she determines committed or aided the terrorist attacks of September 27, 2022 in order to prevent any future acts of international terrorism against the United States…"

At issue with the case before us is Title X of the law. Subject to the AUMF of 2022 and 50 U.S.C. ch. 33 (*War Powers Resolution*), Title X grants the President and Secretary of Defense the power to categorize any person determined to partake in or substantially support the planning of any future acts of international terrorism against the United States in furtherance of the Odin-Russe cause as "enemy combatants".

Petitioner Mitchell Peterson, a United States citizen born in Toledo, OH, grew sympathetic to the Odin-Russe cause. Department of Defense (DoD) officials allege that Mitchell became active in pro-Russian social media networks on the dark web as early as 2020. Upon the Russian invasion of Ukraine, Mitchell's fervor for the cause led him to

leave his home in Ohio and travel to Sevastopol, Crimea in the winter of 2022. During the 2010's, Sevastopol, which has been under Russian occupation since 2014, became a magnet for Odin-Russe recruits seeking to join the cause and lend their minds and bodies to the mission of destabilizing the developed world in hopes the Russian Federation may regain homogony.

Following a six-month training in tactical warfare, mycology (the study of fungi), and ballistics, petitioner was sent to the Republic of Haiti in preparation for another September 27 style cordyceps attack. Odin-Russe realized the geo-political importance of Hispaniola's location in the Caribbean Sea. They believed that successfully causing a mass causality bio-terror attack in Haiti and the Dominican Republic would both weaken the economic independence of other Latin American countries and strain the physical and economic resources of Group of Seven nations that have strong ties to the nations – such as the United States, France, and Brazil.

On February 15, 2023, United States and allied forces which were previously deployed in Haiti arrested petitioner and other persons suspected of planning an Odin-Russe sponsored terrorist attack in the capital city of Port-au-Prince. Petitioner was subsequently detained and transported to Fort Jefferson Naval Base off the coast of Key West, Florida and was designated as an enemy combatant pursuant to Title X of the AUMF 2022. Upon United States officials gaining knowledge that Mitchell was a United States citizen, he was transported to a maximum-security detention facility on U.S. soil

at Homestead Airforce Base in Miami-Dade County, Florida. Petitioner has remained at this location throughout the course of the litigation at issue.

Peterson's daughter, Maria Jackson (*nee* Peterson), filed the petition for a writ of habeas corpus that is before us under 28 U.S.C. §2241 in the United States District Court for the Southern District of Florida. In the petition, Jackson alleges that since her father was detained and placed under custody of the United States Federal Government, she has not been able to communicate with him. Further, the petition for the writ of habeas corpus alleges that Peterson has been denied access to legal counsel and that his detention is in violation of both 18 U.S. Code §4001 (the *Non-Detention Act of 1971)* and the petitioner's Due Process rights under the Fifth Amendment of the Constitution.

The respondent argues that subject to the War Powers Resolution and our decision in *Ex Parte Quirin*, 317 U.S. 1 (1942), an enemy combatant may be detained indefinitely by the United States Government. Respondent claims in their brief that Mitchell's detention is "mission critical" to the national interest of thwarting dangers stemming from Odin-Russe's ongoing attempts to cause the United States, her allies, and their mutual interest's harm. Therefore, the respondent states that to remove the petitioner from federal detention would allow our enemies to regain a vital asset to their efforts to harm the United States, her allies, and their mutual interests.

II. Issues on Appeal

Now, before us we are asked to answer whether the lack of counsel provided to Peterson is a violation of his Fifth Amendment right to Due Process under the constitution. Further, there have been changes in the text between then AUMF of 2001 and the AUMF of 2022, and subsequently the Federal Government's argues that the threat from Odin-Russe is different than that from Al-Qaeda and related organizations. Consequently, this Court has also decided to answer whether citizens who qualify as enemy combatants pursuant to Title X of the AUMF 2022 can be legally subjected to indefinite detention by the Federal Government.

III. Discussion of the law with additional facts as needed

The Due Process Clause of the Fifth Amendment to the Constitution states that no person shall "… be deprived of life, liberty, or property without due process of the law" (U.S. Const. amend. V). We have repeatedly affirmed the right of all people to have access under appropriate measures to challenge the government's attempt to deprive them of their personal freedom or property (*See Murray's Lessee v. Hoboken Land Improvement Co.*, 59 U.S. 19 How. 272 (1856), *Ng Fung Ho v. White*, 259 U.S. 276 (1922), *Moore v. Demspey*, 261 U.S. 86 (1923)).

This body has never held that the government cannot deprive a person or entity of their livelihood or property. Rather, it is the duty of this body to ensure that the state is responsible for overcoming the high burden of proving that their mechanisms to

impose such dispossession on an individual does not surpass the individual's Fifth Amendment protections.

Both in its briefs and during oral arguments before the Court, the respondent vigorously defends the Federal Government's detention of Peterson by painting a vivid image of the horrors our world faces in the midst of rising tribalism under the guise of the Odin-Russe cause. A cause in which the Federal Government alleges that Peterson has claimed allegiance to. Make no mistake, this body understands the gravity of the current state of global affairs that we find ourselves in. Yet, as we have conducted ourselves during the First and Second World Wars, the Vietnam War, and the Global War on Terrorism, the Court's role is not one of support for the political or foreign policy views of the President or leaders of Congress at any given time. Instead, the Court is charged with maintaining the rule of law and upholding the Constitution as our political branches seek to steer our nation to calmer seas through policy in accordance with the will of the electorate.

With that being said, instances do arise when legitimate interests between the government's official action and an individual's life or property are at odds with one another. In these situations, the judiciary is called to apply a balancing test under *Matthews v. Eldridge*, 424 U.S. 319 (1976) to determine if the private party has received adequate due process (*see Shalala v. Illinois Counter on Long Term Care, Inc.* 529 U.S. 1 (2000), *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), *U.S. v. Salerno*, 481 U.S. *739* (1987)). The

three-factor *Matthews v. Elridge* test asks us to assess: 1. the importance of the interest at stake; 2. the risk of erroneous deprivation of the interest because of the procedures used, and the probative values of additional procedural safeguards; and 3. the interest of the government. We agree with both the respondent and dissent that the interest of our nation defending itself against this global threat is of grave importance. However, we do not find merit in the petitioner's deprivation of counsel or other formal legal guarantees afforded to all persons, especially citizens of the U.S., as being the proper procedure to address this interest.

Further, the respondents have failed to give a reasonable explanation for how granting Peterson his right to counsel would directly interfere with—let alone encumber—our nation protecting its populace, homeland, and interests against the adversaries drafted in the text of the AUMF 2022. Moreover, we struggle the find a legitimate basis in the government's interest in detaining a United States citizen, indefinitely, outside of the bounds of our nation's criminal justice system simply because the Executive has declared the individual to be an enemy combatant.

In the final step our *Matthews v. Eldridge* analysis, the Court finds it imperative for posterity's sake, to reiterate that we did not grant a writ of certiorari for the case at issue to examine the culpability of the petitioner for the crimes that the government alleges he has committed. Rather, a writ of certiorari was granted for a narrow, albeit mighty objective: merely to decide whether the petitioner's rights have been abridged

via the circumstances of his current detention. The very rights that would grant the petitioner sufficient access to a proper process to defend himself against any charges are the very same rights that legitimize the Federal Government's power to prove that their charges are warranted. With that being said, we find little support for the means by which the government has deprived the petitioner as a United States citizen on United States soil as adequate and proper.

A citizen's lack of legal counsel will not better protect the United States and her interests. A detained citizen's complete inability to communicate with his family (subject to proper surveillance and security measures) will not save us from future bio-terror attacks. The Federal Government has failed to overcome the burden needed to show that Peterson being stripped of his Fifth Amendment Due Process right is validated by their legitimate interest in protecting the United States in accordance with Title X of the AUMF 2022. Today will not be the day that this Court begins to resolve that enforcement of a statute supersedes our adherence to the Constitution's mandate for us to protect the freedoms of all citizens afforded through the Bill of Rights.

Next, respondent claims that the government's indefinite detention of Peterson pursuant to Title X of the AUMF 2022 is authorized under Congress's continual passage of the *National Defense Authorization Act* (NDAA). They argue that the annual enactment of the NDAA translates directly into Congress's implicit approval of the President's authority to use the whole of government to conduct military operations against

terrorists and nations supporting them. Subsequently, respondents infer that this whole of government approach to combating Odin-Russe warrants Peterson's indefinite detention due to his status as an enemy combatant under the AUMF 2022.

Respondent points to three legal documents that skew the historical gloss of U.S. foreign policy towards granting the Executive near plenary power in this realm: a 2001 Memorandum Opinion to the President from the Department of Justice's Office of Legal Counsel (OLC), and our ruling in *Ex parte Quirin*, and Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. V. Sawyer,* 343 U.S. 579 (1952). This Court does not question the good faith effort that the government makes in raising these defenses, however we do have grave concern over their application to the case before us.

The government first refers to a 2001 OLC memorandum submitted to the President outlining the parameters of his authority to combat global forces of ill intent in the War on Terror. The memorandum asserts that no statute "can place any limits on the President's determinations as to any terrorist threat… and the nature of the response."[4] The memorandum closes by claiming that decisions regarding responses to terrorism "under our Constitution, are for the President to make alone".[5] We agree that Presidential power conferred upon the Office of the Executive cannot be diminished by

[4] John C. Yoo, Dept. Asst. Attorney General, THE PRESIDENT'S CONSTITUTIONAL AUTHORITY TO CONDUCT MILITARY OPERATIONS AGAINST TERRORISTS AND NATIONS SUPPORTING THEM, DEPARTMENT OF JUSTICE, OFFICE OF LEGAL COUNSEL, Sept. 25, 2001.
[5] *Id.*

the ebbs and flows of the enactment and repeal of statutes. However, more importantly, we do not and cannot concur with the notion that these same powers may diminish the rights of a United States citizen bestowed by the Constitution under the guise of defense against global threats.

The Federal Government then returns to *Ex parte Quirin* to support the notion that Peterson's indefinite detention without adequate due process is warranted as a result of his alleged corroboration in unlawful wartime activity against the United States. Still, the government fails to provide rationale for a critical difference between the facts of *Ex parte Quirin* and the case before us today: the citizenship status of the enemy combatants. In *Ex parte Quirin*, the alleged enemy combatants were not United States citizens. These German saboteurs's detention under the jurisdiction of a military tribunal as opposed to adjudicating the charges against them in Article III courts was justified under the War Powers of the Executive under the law of war.

However, in the case before us, Peterson's status as a citizen of our nation affords him access to our courts that was not required in *Ex parte Quirin*. Whether Peterson is an enemy combatant or not pursuant to Title X and whether he has violated our laws by pledging allegiance against our nation shall be questions for a criminal proceeding under the federal judiciary of the United States (*see Boumediene v. Bush*, 553 US 723 (2008). These questions are of upmost importance and the resolution of which may

deprive a citizen of their life, liberty, or property. Therefore, we hold that they must be subjected the scrutiny of an Article III court.

Finally, the respondent claims that Justice Robert Jackson's famous concurrence in *Youngstown* paves the path for the Executive to administer the type of extrajudicial deprivation of due process of a citizen that this court holds as unconstitutional. They argue that Title X of the AUMF 2022 is an appropriate legal measure under the Presentment Clause of the Constitution. Moreover, respondent maintains that the fact that Title X has been administered under Presidential power granted by a congressional act provides the Court little deference to examine it under judicial review.

While history has repeatedly kept Justice Jackson's seminal *Youngtown* categorical spheres of Presidential power relevant, this court has and will continue to apply as much deference as we see fit to ensure the law is properly followed by all parties in all cases that come before us. In this case, to assume that simply because Congress passed the AUMF 2022, and that the President signed it into law means that it is free from review by Article III courts does not reflect well on the respondent's reverence for our federal system of checks and balances.

At best, it appears that the government has conflated this petition for writ of habeas corpus as a matter of foreign policy for which the historical gloss of our federal powers has been gracious to the Executive. Yet, this simply is not the case. Though the petitioner may be involved in dealings that implicate foreign actors and though the

allegations against him are of grave national security concerns, his attempt to stand before our justice system as a citizen rises above all other concerns.

IV. Conclusion

In closing, this court reaffirms that even in times of war, chaos, and global unrest, the United States Federal Government must adhere to the constitutional principles that serve as the backbone of our nation's perpetual pursuit of truth and justice. For this pursuit in itself is essential to our triumph over insidious forces that threaten our sovereignty both within and beyond our borders. No further consideration of this issue is necessary at this moment.

The judgement of the United States Court of Appeals for the Eleventh Circuit is vacated, and the case is remanded for further proceedings.

Applicant Details

First Name	**Simon**
Last Name	**Poser**
Citizenship Status	**U. S. Citizen**
Email Address	**sposer@law.gwu.edu**
Address	**Address** Street **2030 F Street** City **Washington** State/Territory **District of Columbia** Zip **20006**
Contact Phone Number	**7186500272**

Applicant Education

BA/BS From	**Haverford College in Pennsylvania**
Date of BA/BS	**May 2019**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 19, 2024**
Class Rank	**25%**
Law Review/Journal	**Yes**
Journal(s)	**Federal Communications Law Journal - The Tech Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Moot Court Board**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Tillipman, Jessica
jtillipman@law.gwu.edu
202-994-2896

Lerner, Renée
rlerner@law.gwu.edu
(703) 528-8155

Melinda, Roth
melindaroth@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

SIMON AUGUST POSER
2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a law student at The George Washington University Law School and will be graduating in May 2024. I am writing to apply for a judicial clerkship with you for the 2024-2025 Term.

I am especially interested in applying to your chambers for two reasons. First, I am firmly committed to pursuing a career in litigation in the Washington D.C. area. I worked as a paralegal at Covington & Burling for two years prior to attending GW Law, and it has me certain that litigation is what I want to dedicate my legal career to. I want to gain experience working for a federal district court judge to develop my research and writing skills, as well as work on trials. I have worked on litigation matters in a wide variety of roles in both private practice and in government, and believe these experiences give me a unique and well-rounded perspective in analyzing legal issues.

Second, Your Honor's prosecutorial experience deeply resonates with me because it is a high aspiration of mine to serve one day as an Assistant United States Attorney. I was able to intern in the U.S. Attorney's Office for the Eastern District of New York in the summer of 2022, and it has inspired me to pursue a career in public service after law school as a prosecutor. I believe getting experience as a law clerk would be invaluable in improving my understanding of the criminal process, and will make me a better prosecutor in the future.

I believe all these experiences will make me a strong judicial law clerk in your chambers next year, and I know and appreciate the value a judicial clerkship will add to my career. I have attached my resumé, transcript, writing sample and references for your review. Thank you for your time and consideration.

Respectfully,
Simon August Poser

SIMON AUGUST POSER
2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

EDUCATION

The George Washington University Law School Washington, D.C.
J.D. Expected, **GPA**: 3.630 May 2024

Honors: Thurgood Marshall Scholar (Top 16% to 35% of class, to date)
Dean's Recognition for Professional Development
Journal: *Federal Communications Law Journal – The Tech Journal* (Associate)
Note: *Living in Private: Reinvigorating the Fourth Amendment in the Digital Era by Providing Clear and Consistent Rules to Courts* (Publication Forthcoming)
Skills Boards: Moot Court Board (Member); Mock Trial Board (Member)
Activities: Student Tutor (Constitutional Law I, Criminal Law, Criminal Procedure, Evidence, Property); Anti-Corruption and Compliance Association (President, 2022-2023 term); Tech Law Students Association (Member); SBA Mentor; Mock Trial Coach

Haverford College Haverford, PA
B.A., Political Science, **GPA**: 3.278; Major **GPA**: 3.83 May 2019
Activities: *The Clerk Newspaper* (News Editor); Student's Council (Junior Class Representative)

EXPERIENCE

Civil Fraud Section, United States Department of Justice Washington, D.C.
Incoming Legal Intern January 2024—April 2024

The Honorable Timothy J. Kelly, District Judge, D.C. District Court Washington, D.C.
Incoming Judicial Intern September 2023—December 2023

Seeger Weiss, LLP New York, NY/Ridgefield Park, NJ
Summer Associate June 2023—August 2023
- Researched caselaw, wrote multiple sections of reply brief in support of motion to compel discovery
- Assisted in preparation for deposition of marketing executive at Fortune 500 company
- Briefed attorneys on issues representing in-house counsel-whistleblower in False Claims Act case

The Honorable Jason Park, Associate Judge, D.C. Superior Court Washington, D.C.
Judicial Intern January 2023—April 2023
- Conducted legal research and made recommendations for cases before Judge Park
- Drafted orders and bench memoranda, made case binders for the judge's use in hearings and trials

U.S. Attorney's Office for the Eastern District of New York, Criminal Division Brooklyn, NY
Legal Intern, Securities Fraud and Organized Crime/Gangs Sections May 2022—August 2022
- Conducted legal research, wrote motions and memoranda on issues relating to criminal procedure, evidentiary disputes, statutory interpretation, and other questions of criminal law
- Reviewed documents and assisted in preparation for proffers in securities fraud investigation

Covington and Burling, LLP Washington, D.C.
Litigation Paralegal September 2019—July 2021
- Provided logistical support to lawyers for litigation and investigative matters in various practice groups
- Served document productions, maintained review databases, and assisted in document review
- Edited, cite checked, and filed numerous briefs, motions, and other pleadings

INTERESTS

- Competitive tennis player (15 years); hiking in national parks (7 visited overall); art history; theater

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G32358278
Date of Birth: 19-MAY

Date Issued: 06-JUN-2023

Record of: Simon A Poser

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: SIMON POSER
SPOSER@GWU.EDU

REFNUM:5731032

Current College(s):Law School
Current Major(s): Law

GEORGE WASHINGTON UNIVERSITY CREDIT:

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2021			
Law School			
Law			
LAW 6202	Contracts Chatman	4.00	B-
LAW 6206	Torts Schoenbaum	4.00	A-
LAW 6212	Civil Procedure Berman	4.00	B+
LAW 6216	Fundamentals Of Lawyering I Rabe	3.00	B+
Ehrs 15.00	GPA-Hrs 15.00	GPA 3.244	
CUM 15.00	GPA-Hrs 15.00	GPA 3.244	
Spring 2022			
Law School			
Law			
LAW 6208	Property Nunziato	4.00	A-
LAW 6209	Legislation And Regulation Schaffner	3.00	B
LAW 6210	Criminal Law Cottrol	3.00	A-
LAW 6214	Constitutional Law I Morrison	3.00	A-
LAW 6217	Fundamentals Of Lawyering II Pusateri	3.00	A
Ehrs 16.00	GPA-Hrs 16.00	GPA 3.604	
CUM 31.00	GPA-Hrs 31.00	GPA 3.430	
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
Fall 2022			
Law School			
Law			
LAW 6230	Evidence Saltzburg	4.00	A
LAW 6360	Criminal Procedure Lerner	3.00	A+
LAW 6393	First Amendment - Religion Tuttle	3.00	A-
LAW 6683	College Of Trial Advocacy Saltzburg	3.00	A
Ehrs 13.00	GPA-Hrs 13.00	GPA 4.000	
CUM 44.00	GPA-Hrs 44.00	GPA 3.598	
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Spring 2023			
LAW 6250	Corporations	4.00	A
LAW 6252	Securities Regulation	3.00	B+
LAW 6511	Anti-Corruption And Compliance	2.00	A-
LAW 6668	Field Placement	2.00	CR
LAW 6669	Judicial Lawyering	2.00	A
Ehrs 13.00	GPA-Hrs 11.00	GPA 3.758	
CUM 57.00	GPA-Hrs 55.00	GPA 3.630	
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
Fall 2022			
Law School			
Law			
LAW 6657	Fed Communication Law Jrl Note	1.00	----------
Credits In Progress:	1.00		
Spring 2023			
LAW 6657	Fed Communication Law Jrl Note	1.00	----------
Credits In Progress:	1.00		
Fall 2023			
LAW 6218	Prof Responsibility & Ethics	2.00	----------
LAW 6362	Adjudicatory Criminl Procedure	3.00	----------
LAW 6364	White Collar Crime	3.00	----------
LAW 6380	Constitutional Law II	4.00	----------
LAW 6413	Federal Communications Law Jrn	1.00	----------
LAW 6644	Moot Court - Van Vleck	1.00	----------
LAW 6652	Legal Drafting	2.00	----------
Credits In Progress:	16.00		

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	57.00	55.00	199.67	3.630
OVERALL	57.00	55.00	199.67	3.630

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

NOTICE TO RECIPIENT

Federal legislation (the Family Educational Rights and Privacy Act) requires institutions of higher education to inform each recipient of this academic record that it is to be used only for the purpose for which it was presented and that it is not to be copied or made available to a third party without the express permission of the individual concerned. It must be pointed out in this context that as a general practice, mutually agreed upon by professional associations, such records are not to be reproduced for distribution beyond the purview of the recipient or his/her organization.

DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added*: A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my enthusiastic support of Simon Poser's application to serve as one of your law clerks. His intelligence, dedication and maturity make him a strong candidate for a judicial clerkship, and he would be an asset to you and your chambers.

I have worked closely with Simon in his capacity as the president of the Anti-Corruption and Compliance Association, of which I am the faculty advisor. The Anti-Corruption and Compliance Association is a student group at GW Law School that organizes and promotes anti-corruption and compliance events and opportunities for students.

Over the past year, Simon has demonstrated exceptional leadership and professionalism in the performance of his duties. For example, during the Spring 2023 semester, Simon organized a high-profile event featuring a large panel of senior attorneys. There were numerous logistical matters that he had to manage for this event to run smoothly, and Simon did an incredible job (while also handling his many other academic obligations). I'm proud to say that the event resulted in record turnout by the student body and phenomenal feedback from the practitioner participants. I was truly impressed by the quality of the program, the number of student attendees, and Simon's outstanding organizational and communication skills. Moreover, in his role as the group's president, he routinely managed a large group of student leaders and demonstrated, repeatedly, that he has excellent management skills and a keen ability to collaborate effectively with his peers.

Simon also took my Anti-Corruption and Compliance course last year, so I had the chance to evaluate his academic coursework, which was very good. Simon routinely contributed to class discussions, attended office hours, and demonstrated enthusiasm for the subject matter by engaging with material outside of the assigned readings – often sharing information with me about cases or current events that touched upon the subject matter of the course. Simon's performance on his take-home exam was also very good. His exam demonstrated not only that he knew and understood the law, but that he could apply it persuasively to a complicated fact pattern. Simon also did an excellent job completing an in-class exercise in which he had to develop corporate compliance enhancements for a company and then "pitch" the enhancements to an expert practitioner. Simon received excellent feedback from the attorney evaluating his performance, who commented on his strong public speaking skills and persuasive written recommendations.

Although Simon's academic credentials alone make him a strong candidate for this position, I should note that Simon is someone whom you would enjoy having in your chambers. He is personable, friendly, and has the maturity and professionalism to thrive. I expect that, upon graduation, he will prove himself to be a consummate professional.

As you select your clerks this year, I hope you will consider Simon as a prime candidate. If I can answer any questions you might have about Simon, please do not hesitate to call me at (202) 994-2896. I thank you for your consideration.

Best Regards,

Jessica Tillipman
Assistant Dean for Government Procurement Law Studies
The George Washington University Law School
2000 H Street, N.W.
Washington, D.C. 20052
Tel (202) 994-2896
jtillipman@law.gwu.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a great pleasure to recommend Simon Poser for a clerkship in your chambers. Simon is deeply thoughtful about the law and his career. He has an intense interest in criminal law and procedure and is determined to be an Assistant U.S. Attorney. He has taken time to learn about the job, through internships and other professional opportunities. He wants to be an AUSA because, as a current one told him, “It’s simple: Your job is to do the right thing, for the right reasons, all the time. It’s not to win the most trials, get the longest sentences, or have the last word. Your job is to seek justice, represent your country, and honor the rule of law.” That work appeals to Simon.

In my Criminal Procedure class in fall 2022, Simon stood out for his thorough preparation and accurate answers to my questions. He also posed a number of interesting questions that deepened the understanding of the material for the entire class. I was always glad to see his hand raised, as I knew that I and the whole class would benefit.

Given his excellent class participation, I had high expectations for his exam. But he outdid them, earning a grade of A+. His answers to the multiple choice questions showed that he had mastered the doctrine. Simon showed that he grasped the deeper themes of the course and applied them perfectly to the essay question. He demonstrated not only writing talent, but also outstanding analytic ability.

Criminal Procedure was in fact one of Simon’s favorite courses in law school. He relished the policy discussions, in particular. He also enjoyed Corporations, especially the topics of fiduciary duties and insider trading. He is hoping to merge his interests in criminal and corporate law to work on white collar cases, as a prosecutor and possibly as a defense lawyer. Before becoming an AUSA, he hopes to work at a law firm doing some combination of commercial litigation and white collar investigative work.

He wrote a note for the Federal Communications Law Journal. He argues that existing Fourth Amendment doctrine in the lower courts is inconsistent respecting contemporary surveillance technologies like pole cameras, geo-fencing, and facial recognition software. He recommends that the Supreme Court adopt a new test to determine when surveillance is too widespread and intrusive to be done without a warrant supported by probable cause. His proposed test relies on objective factors that the Supreme Court has identified in its electronic surveillance cases. He uses recent circuit court decisions that have split on various technologies to show the problems with the status quo and the consistency and clarity his solution would provide.

Simon likes to read contemporary non-fiction and biographies, classic novels, and the occasional spy-thriller. He most recently read Persuasion by Jane Austen, and before that These Truths, a history of the United States, by Jill Lepore.

Simon has great fondness for the neighborhood where he grew up in Brooklyn, Park Slope, near Prospect Park. He is proud to be a New Yorker, and believes he learned there toughness and resilience, as well as an appreciation for a rich diversity of people. His family seems secure and tight-knit; he clearly admires and is grateful to his parents and his older sister and brother. He has a deep appreciation for the arts, relishing playing the clarinet, especially his favorite Bach cantata, and oil painting. He loves to play tennis, including recreational tournaments in DC. I always enjoy conversations with Simon. He radiates thoughtfulness, eagerness to learn, and good cheer. He would be a pleasure to work with and a great asset to your chambers.

Please do not hesitate to contact me if I may be of further assistance.

Very truly yours,

Renée Lettow Lerner
Donald Phillip Rothschild Research Professor of Law
The George Washington University Law School
(202) 994-5776
rlerner@law.gwu.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend most highly and enthusiastically Simon Poser for a clerkship.

Every so often, a student stands out in a sea of accomplished, intellectually curious, smart law students. Simon Poser is that student.

In the spring of 2023, Simon took my Corporations class at George Washington University Law School. Even in our first few sessions, he asked some probing questions that indicated his intuitive understanding of the complex Corporations material.

When comparing Simon to other law students I have taught over the past eight years, I would rank him among the most inquisitive and knowledgeable. Only a handful of students each year have earned an outright A on any of my exams. Simon was one of a very few in Corporations to earn an outright A, and I expect a similar grade from him in my Corporate Finance class next spring.

I have been able to get to know Simon well, as we would talk before and after class, as well as after the semester ended. He was excited to share with me that he was offered and accepted prestigious judicial and legal internships for the 2023-2024 academic year. Given Simon's experience as a legal intern with the U.S. Attorney's Office for the Eastern District of New York, as a judicial intern in several courts and then with the Department of Justice's Civil Fraud Section, Simon will be able to hit the ground running in your court. All this relevant experience will serve him well.

Simon is exactly the kind of clerk I would want if I were a judge: someone who is prepared and knowledgeable, but also knows how to spot the issue and ask all the right questions. He has the perfect mix of skills to succeed as a clerk.

In addition, for such a clerkship, his character therefore matters. I can -- without any hesitation – recommend Simon not only as an excellent student but as a good person too with a solid character. He has told me about his family as both his parents are attorneys, and his mom has served as a justice in the New York Court of Claims for the past decade or so. Simon hopes to live up to these big shoes to fill. I have no doubt he will do just that, and leave his own mark.

Simon Poser would be an outstanding clerk. He is a knowledgeable young lawyer, but always keen to learn more. Based on his efforts in our class and his internship experiences, I am positive Simon would stand out in your courtroom the same way he has stood out in my classroom. He is extremely personable, keenly intelligent, hardworking and would be a tremendous asset to your court.

Please do not hesitate to contact me with any further questions about his qualifications. Thank you for your consideration.

Sincerely,

Melinda Roth

Visiting Assistant Professor
The George Washington University Law School
melindaroth@law.gwu.edu

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

WRITING SAMPLE

This writing sample is a draft order I wrote during my internship in the chambers of the Honorable Jason Park, who currently serves as an Associate Judge on the D.C. Superior Court. This order pertained to a motion filed by the government to issue a protective order for the dissemination of body worn camera footage from police officers involved in the case. Specifically, the government wanted to restrict who could view this footage given that it contained personal information of individuals who they were worried could have their privacy or safety put at risk if unauthorized persons obtained possession of the footage.

The name of the defendant, as well as other identifying information from the case, has been redacted from this writing sample in accordance with the request of Judge Park and his clerks. If you would like to receive any additional explanation regarding the order or the facts of the case, please let me know.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH

UNITED STATES OF AMERICA, v. [Redacted], Defendant.	Case No.: [Redacted] Judge Jason Park [Redacted]

ORDER

This matter comes before the court on the government's opposed motion for a protective order governing body worn camera ("BWC") materials, filed on [redacted], 2023, and the defendant's opposition thereto, filed [redacted], 2023. Having reviewed the materials in this case, any opposition thereto, and the records therein, for the reasons stated below the government's motion is **GRANTED.**

PROCEDURAL AND FACTUAL BACKGROUND

The defendant, [redacted], is charged with carrying a pistol without a license. The defendant was arrested and presented before the Court on [redacted], 2022. A preliminary hearing took place on [redacted], 2023. On [redacted], 2023, the government filed this motion ("Gov't Mot. Protective Order") seeking a protective order to prohibit dissemination of BWC materials to any party outside of the "legal defense team"[1] and limiting the use of these materials

[1] "The 'legal defense team' includes defense counsel (defined as counsel of record in this case, including any post-conviction or appellate counsel) and any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case. The legal defense team shall not include the defendant or the defendant's family members, friends, or associates." Gov't's Proposed Order at [redacted].

by the defendant and the legal defense team exclusively to this case. *See generally* Gov't's Proposed Order. The defendant filed his opposition on [redacted], 2023, asking the Court to deny the government's motion for a protective order governing BWC materials under the First, Fifth, and Sixth Amendments, Superior Court Criminal Rule 16, and *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Def. Opp'n at [redacted].

LEGAL STANDARD

Superior Court Rule of Criminal Procedure 16(d)(1) provides that "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." This includes the issuance of protective orders, which are used frequently in criminal cases to facilitate the prompt disclosure of information while protecting the privacy and safety of interested third parties.[2] When a Superior Court procedural rule, such as Rule 16, is modeled after an identical federal counterpart[3], this Court may look to federal case law interpreting the corresponding federal rule "for guidance on how to interpret our own [rule]." *See, e.g.*, *Bilal v. United States*, 240 A.3d 20, 27 n.7 (D.C. 2020) (quoting *Estate of Patterson v. Sharek*, 924 A.2d 1005, 1009-10 (D.C. 2007)); *Rowland v. United States*, 840 A.2d 664, 678 & n.16 (D.C. 2004).

A party seeking a protective order bears the burden of showing good cause. *See, e.g., United States v. Cordova*, 806 F.3d 1085, 1090 (D.C. Cir. 2015). Good cause is established through a "particularized, specific showing." *See, e.g., United States v. Bulger*, 283 F.R.D. 46, 52 (D. Mass. 2012); *United States v. Smith*, 985 F. Supp. 2d 506, 523-24 (S.D.N.Y. 2013). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not

---

[2] *See United States v. O'Keefe*, No. 06-CR-249, 2007 WL 1239204, at *2 (D.D.C. Apr. 27, 2007) (noting that "[p]rotective orders in criminal cases are not uncommon . . . ."); *Alderman v. United States*, 394 U.S. 165, 185 (1969) (advancing the principle that the "trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against **unwarranted disclosure** of the materials which they may be entitled to inspect.") (emphasis added).

[3] Federal Rule of Criminal Procedure 16(d) states that the court "may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief."

support a good cause showing." *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007) (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d. Cir. 1994)). "The nature of the showing of particularity, however, depends upon the nature or type of protective order at issue." *Bulger*, 283 F.R.D. at 52-53; *see also United States v. Cudd*, 534 F. Supp. 3d 48, 57 (D.D.C. 2021) (noting that in cases that involve substantial amounts of discovery, "it is consistent with the proper allocation of evidentiary burdens for the Court to construct a broad . . . protective order upon a threshold showing by the government of good cause." (quoting *Smith*, 985 F. Supp. 2d at 546)).

In deciding whether to enter a protective order and what the terms of any protective order should be, the Court must balance the interests asserted by the moving party, the interests of the non-moving party, and the public interest. *See Smith*, 985 F. Supp. 2d at 523-24; *see also United States v. Davis*, 809 F.2d 1194, 1210 (6th Cir. 1987) (demonstrating that trial courts must consider whether the imposition of the protective order would substantially prejudice the defendant). Furthermore, the privacy interests of third parties may properly be considered in a court's balancing of competing interests. *See Smith*, 985 F. Supp. 2d at 524-25.

ANALYSIS

In this case, the Court will grant the government's motion because the government has established good cause to issue the proposed protective order governing BWC materials. First, the government has an interest in protecting the privacy rights and safety concerns of crime victims, witnesses, and third parties. As the government contends, BWC footage frequently includes personal identifying and other sensitive information, the dissemination of which raises potential privacy and safety concerns absent a protective order. *See* Gov't Mot. Protective Order at [redacted]. The fact that D.C. has adopted regulations governing the disclosure of BWC

footage to the public further reinforces this Court's finding that restrictions on the dissemination of BWC footage are warranted. *See* D.C. Mun. Regs. Tit. 24 § 3902.5(a); *see also United States v. Johnson*, 314 F. Supp. 3d 248, 257 (D.D.C. 2018) (acknowledging that D.C.'s regulations governing the disclosure of BWC footage to the public, although not controlling, "represent a policy judgment that such materials tend to contain information that implicates privacy concerns"). Here, the proposed protective order furthers the government's legitimate interest in protecting the privacy interests and safety concerns of individuals captured on the BWC footage.

Second, the issuance of a protective order will not prejudice the defendant. Rather, the issuance of a protective order will facilitate the early disclosure of BWC materials, which defense counsel can review with the defendant and others subject to the restrictions detailed in the protective order. While this Court understands the concerns articulated in the defendant's opposition, nothing in the proposed order prevents the legal defense team from copying materials as they deem necessary for use in connection with this case and retaining a copy following the conclusion of the case. *See* Govt's Proposed Order at [redacted]. Furthermore, nothing prevents the defendant from seeking to modify the protective order at any time. *See id.* at [redacted].

However, the Court is persuaded that allowing defense counsel to show portions of the BWC footage that do not contain sensitive information to prospective witnesses and others will better facilitate defense counsel's investigation. Thus, this Court will modify the language of the protective order to allow defense counsel to authorize the viewing of the BWC footage where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense.[4]

[4] This language is similar to language used by the District Court for the District of Columbia in *Johnson*, 314 F. Supp. 3d at 256, and in *United States v. Kingsbury*, 325 F. Supp. 3d 158 (D.D.C. 2018). The *Johnson* court went further by requiring the government to redact all discoverable BWC footage before disclosing it to the defense in the absence of a consent protective order. *Johnson*, 314 F. Supp. 3d at 253-55. At this stage, this Court is unwilling to

Third, the issuance of this protective order is in the public interest. The government's proposed protective order does not apply to BWC materials that are, or later become, part of the public record. *See* Govt's Proposed Order at [redacted]. Additionally, any interest the public has in unfettered access to BWC footage must be weighed against the privacy concerns of individuals captured on camera. *See Smith*, 985 F. Supp. 2d at 524 (collecting cases). Thus, the Court finds that the protective order strikes an appropriate balance between protecting the privacy interests of third parties and while facilitating efficient discovery and enabling the defendant to investigate his case and prepare for a potential trial.[5]

Moreover, the Court disagrees with the defendant's argument that the government's proposed protective order violates his Sixth Amendment right to effective assistance of counsel by hindering defense counsel's ability to conduct a thorough investigation, consult with experts, and moot with attorneys at the Public Defender's Service. Def. Opp'n at [redacted]. The definition of "legal defense team" in the government's proposed protective order includes "any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case." Govt's Proposed Order at [redacted]. This language is unambiguous and broad enough to allow defense counsel to consult with experts and moot with other PDS attorneys. The Court also disagrees that the proposed protective order impermissibly infringes on the defendant's ability to participate in his own defense. The protective order allows defense counsel to share BWC footage with the defendant and authorizes defense counsel to leave

---

place the burden of redacting all discoverable BWC footage on the government because such a policy would cause a substantial delay in disclosure and "is inconsistent with the rules requiring efficient and expeditious discovery." *See United States v. Dixon*, 355 F. Supp. 3d 1, 8 (D.D.C. 2019) (distinguishing *Johnson*, granting BWC protective order, and refusing to shift the burden of redacting BWC footage to the government).

[5] Defendant correctly points out there is a presumption of public access to court documents, and that in order to overcome the presumption against protective orders the government must show its protective order is tailored to serve a compelling government interest. *See* Def's Opp'n at [redacted]. For the reasons enumerated herein, this Court finds the government's need to protect the privacy rights of individuals captured on BWC footage is such an interest, and the order is sufficiently tailored to serve it without infringing on the defendant's constitutional rights.

a copy of the materials, redacted of sensitive information, with the District of Columbia Department of Corrections ("DCDOC") so that the defendant can view the materials pursuant to DCDOC's procedures.

Finally, the Court does not agree with the defendant that the issuance of a protective order would infringe on defense counsel's ethical duties. Defendant claims that the government's proposed protective order contravenes the rules of ethics by preventing defense counsel from providing the defendant with all disclosed BWC footage in its unredacted form as part of his "entire file" at the conclusion of his case. Def. Opp'n at [redacted]. Nothing in the D.C. Bar opinions cited to by the defendant convinces the Court that the defendant is entitled to retain unredacted BWC materials as part of his entire file at the close of his case. *See United States v. Wolfendale*, 2020 D.C. Super. LEXIS 34, *10 n.1 (D.C. Super. Ct. November 30, 2020) (granting BWC protective order over the defendant's opposition and finding that "the [d]efendant's attorney has no ethical obligation to maintain the body-worn camera [footage] after an acquittal or dismissal, because the Defendant is not entitled to the body-worn camera [footage], and thus [it] does not fall under the obligations in D.C. Rules of Professional Conduct 1.16(d)").

Defense counsel seems to believe that the government's proposed protective order requires the return of all copies of the BWC footage to the United States Attorney's Office at the conclusion of the case. *See* Def. Opp'n at [redacted]. This is simply not the case. In fact, the government's proposed protective order explicitly allows defense counsel to "retain a copy of the BWC materials following the conclusion of this case." Govt's Proposed Order at [redacted].

In light of this showing, and in order to protect the individual officers' privacy interests while also expediting the flow of discovery, the Court grants the government's motion for a protective order in this case. *See Johnson*, 314 F. Supp. 3d at 251-52. The proposed protective

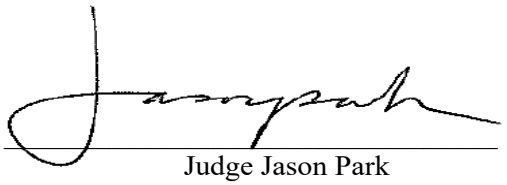
order appropriately facilitates speedy discovery while protecting the security and privacy interests of witnesses and third parties. The Protective Order Governing Body Worn Camera Footage issued below adopts the government's proposed language, except that paragraph four (and the subsequent paragraphs where appropriate) are modified to allow defense counsel to authorize the viewing of the BWC footage by any person where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense. Defense counsel may seek modifications to the protective order to ensure that the defendant is not prejudiced.

Accordingly, it is this [redacted] day of [redacted], 2023, hereby

ORDERED that the government's motion is **GRANTED;** and it is further

ORDERED that a signed protective order governing body worn camera materials will issue separately.

SO ORDERED.



Judge Jason Park
Superior Court of the District of Columbia

Copies to:
[Redacted]
Via CaseFileXpress